IN THE FAMILY COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

B------ C-----,	)	
	)	**FILE NO.: CN19-04414**
Petitioner,	)	
v.	)	**CPI NO.: 19-23930**
	)	
M---- L----,	)	
	)	
Respondent.	)	

ANCILLARY MATTERS

Date of Hearing: May 20, 2021
Date Submitted: August 8, 2022
Date Decided: September 6, 2022

B------ C-----, Self-Represented
Kara Swasey, Esquire, Attorney for Respondent

Ranji, J.

INTRODUCTION

This is the Court's decision on the ancillary matters of property division, counsel fees and court costs incident to the separation and divorce of Petitioner B------ C----- ("C-----"), *pro se*,[1] and Respondent M---- L---- ("L----"), represented by Kara Swasey, Esq. The parties married May 24, 2014 and divorced by Order of this Court on December 17, 2019. The parties do not agree as to the date of their separation. C----- asserts that the date of separation was July 1, 2017, while L---- asserts the date of separation was December 31, 2017.

PROCEDURAL HISTORY and BACKGROUND

This case has a lengthy procedural history since the time of the December 2019 divorce. A few months later, on April 21, 2020, L---- filed an Emergency *Ex Parte* Motion for Interim Relief Pursuant to 13 *Del. C.* § 1509(b)(4)[2], alleging, *inter alia*, that C----- should be removed from the marital home because of threatening and harassing behaviors. The Court denied L----'- motion on April 23, 2020 but scheduled an expedited hearing and ordered the parties to remain 6 feet away from one another at all times, even when in the residence.

C----- filed a response to L----'- motion on May 6, 2020, alleging that L---- was following her around and breaching the Court's order that the parties remain 6 feet apart. C----- also alleged that L----, who is an attorney, was using her legal acumen to harass C----- and bully her through

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[1] B------ C----- was initially represented by Marie Crossley, Esq. Ms. Crossley withdrew her representation of Ms. C----- on July 7, 2020, at which point David Gagne, Esq. was substituted as counsel. Mr. Gagne withdrew as Ms. C-----'- counsel on June 10, 2021, and Ms. C----- elected to proceed self-represented.

[2] Title 13 Section 1509 states in relevant part:

> Petitioner in the petition for divorce or annulment, or by motion filed simultaneously with the petition, or either party by motion filed after the filing of the petition, may move for 1 or more of the following interim orders:
>
> > (4) Excluding a party from the family home or from the home of the other party even though such party has a legal or equitable interest in the same, upon a showing that physical or emotional harm might otherwise result;

the court system. C----- ultimately requested that the Court grant her exclusive use and possession of the home.

The Court held a hearing on May 7, 2020, to address the cross Motions for Interim Relief, for which L---- appeared represented by Kara Swasey, Esq., and C----- appeared represented by Marie Crossley, Esq. Following that hearing, the Court found that continued cohabitation in the home may result in physical or emotional harm and that C----- was primarily the aggressor and displayed a pattern of behavior that was both threatening and harassing to L----. C----- was given two weeks from May 27, 2020 to vacate the home and L---- was granted exclusive use and possession of same.[3] C----- was to vacate with basic necessities unless the parties agreed otherwise.

L---- filed a Petition for Partition and Emergency Motion for Interim Relief on May 18, 2020. Her Petition asserted that the parties' jointly owned residence was not subject to division pursuant to 13 *Del. C.* §1513. L---- argued that the parties had purchased the property prior to same-sex marriages being legal in Delaware and prior to the 2016 addition of the following language to Section 1513: "All jointly-titled real property acquired by the parties prior to their marriage, unless excluded by valid agreement of the parties."[4] L---- asserted that this statutory change should not be applied retroactively and therefore requested that the Court partition the home rather than including it in the property to be divided pursuant to Section 1513.

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[3] *See* C----- v. L----, Del. Fam. CN19-04414, 19-23930, 20-10564, Ranji, J. (May 27, 2020).

[4] Title 13 Section 1513 states in relevant part:

(b) For purposes of this chapter only, "marital property" means all of the following:

(1) All property acquired by either party subsequent to the marriage, except any of the following:

a. Property acquired by an individual spouse by bequest, devise, or descent or by gift, except gifts between spouses, provided the gifted property is titled and maintained in the sole name of the donee spouse, or a gift tax return is filed reporting the transfer of the gifted property in the sole name of the donee spouse or a notarized document, executed before or contemporaneously with the transfer, is offered demonstrating the nature of the transfer.

b. Property acquired in exchange for property acquired prior to the marriage.

c. Property excluded by valid agreement of the parties.

d. The increase in value of property acquired prior to the marriage.

The hearing regarding matters ancillary to the parties' divorce was initially scheduled for July 8, 2020, with a pretrial conference scheduled for May 26, 2020. At the request of counsel, however, the Court continued the pretrial conference and used the time as a case management hearing to address the pending Motion. During the hearing, the parties agreed that the issue of whether the real property owned by the parties should be addressed in divorce ancillary proceedings or in a partition action should be addressed prior to the Court holding the ancillary hearing. At the conclusion of the hearing, the Court ordered the parties to submit a Memorandum of Law offering legal support and argument as to their positions on the treatment of the jointly owned real property.[5]

C----- submitted a Response and Counterclaim to L----'- Motion for Interim Relief on June 1, 2020, requesting that the Court issue declaratory relief concluding that the property should be disposed of within the pending ancillary matters.

C----- filed a Motion for Reargument and Stay of the Court's May 27th order granting L---- exclusive use and possession of the home, reasoning that L----'- assertion that the residence was not marital property subject to relief under Chapter 15 created a question as to whether the Court had jurisdiction to order C-----'- removal under that chapter.

On June 11, 2020, L---- filed a Motion and Affidavit for Emergency *Ex Parte* relief requesting that the Court find C----- in contempt of its May 27th Order for her failure to vacate the home and that the Court sanction C----- $1,000 for each day she failed to vacate the home and issue a capias for her arrest if she failed to vacate within 3 days.

[5] *See* C----- v. L----, Del. Fam. CN19-04414, 19-23930, Ranji, J. (May 27, 2020).

C----- filed a Response to L----'- Motion on June 11, 2020, in which she averred that she had requested a two-week extension to vacate the home which C-----'- counsel refused and she then filed her Motion to Reargue.

On June 11, 2020, the Court granted L----'- Motion and required C----- to immediately vacate the home.

L---- filed a response to C-----'- Motion for Reargument and Stay on June 18, 2020, asserting that C-----'- argument that a party cannot be excluded from a home subject to a partition action was incorrect and frivolous.

On June 24, 2020, the Court issued its decision on C-----'- Motion to Reargue and Stay, denying that Motion and noting that C----- was now arguing that the Court did not have jurisdiction to grant the very relief she requested in her counterclaim. The Court also ordered C----- to pay L----'- attorneys' fees related to the filing of the Emergency Motion for Contempt for C-----'- failure to vacate the residence.[6]

L---- and C----- submitted their Memoranda of Law as it related to the marital residence being classified as marital property on July 7, 2020.

On July 14, 2020, the Court issued its decision granting the Petition for Declaratory Judgment and dismissing the Petition for Partition. The Court concluded that the provisions of 13 Del. C. §1513(b)(2) apply retrospectively and that the S------ Road property is therefore marital and subject to distribution in accordance with the provisions of Chapter 15 of Title 13.[7]

L---- appealed the Court's Order on the Petition for Partition on August 13, 2020 and filed a Motion for Continuance of the pretrial conference and ancillary matters pending appeal. The

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[6] See C----- v. L----, Del. Fam. CN19-04414, 19-23930, Ranji, J. (June 24, 2020).
[7] See C----- v. L----, Del. Fam. CN19-04414, 20-10564, Ranji, J. (July 14, 2020).

Court stayed the proceedings until the appeal reached a final determination. On March 1, 2021, the Delaware Supreme Court affirmed this Court's order related to the Petition for Partition.

On March 12, 2021, the Court issued a Letter Decision and Order scheduling the pre-trial conference for August 11, 2021 and the trial for September 13, 2021. That Order also required the parties to meet at least 30 days before the trial date in an attempt to resolve issues related to the ancillary proceeding and required the parties to submit the completed Ancillary Pre-trial Stipulation Form ("PTS") at least three days before the pre-trial conference.

C----- filed a Motion for Attorneys' Fees and Costs related to the appeal of the partition matter, and L---- filed a response in opposition on April 28, 2021. The Court denied C-----'- Motion on May 3, 2021.

C----- filed a Motion to Compel Inspection of Real Property on May 12, 2021, asserting that her personal property needed to be inventoried and that the home had sustained significant damage since C----- was ordered to vacate the premises. The Court granted C-----'- Motion and required her to find a mutually agreeable date to complete the inspection and further ordered her to hire a private investigator or identify a third-party to perform the inspection while C----- observed. The Court further ordered that the inspection last no longer than 90 minutes.

On August 2, 2021, C----- filed a Motion again requesting that L---- be removed from the former marital residence and that the September 13 hearing date be kept for the ancillary proceeding. L---- filed a response on August 12, 2021, noting that there was no request for the matter to be continued and that C----- failed state with particularity the grounds on which L---- should be removed from the home.

The Court held the pretrial conference on August 17, 2021. The Court received the PTS as required prior to the hearing, but it was signed only by L---- and there was not a single item listed in the "Agreed to" portion of the form. In addition, a lengthy and unsigned "Addendum" was attached to the PTS, which appeared to be a table indicating various claims and responses thereto.

The undersigned questioned the parties during the pre-trial conference regarding their settlement conference and the format of the PTS, which was not particularly helpful in identifying and narrowing the issues. Ms. Swasey explained that when she was on medical leave shortly before the pre-trial conference, C----- had sent her an email in which C----- set forth her positions on various issues and stated that if she did not hear from Ms. Swasey by a date certain, she would assume L---- disagreed with everything she proposed. Ms. Swasey reached out to C----- and informed her that she would be unable to respond in the timeframe given and requested that the parties meet as required, but C----- refused to do so. C----- also was unwilling to complete her portion of the PTS that L---- had completed, asserting that she would submit her own PTS. Ms. Swasey explained she then asked C----- to provide her with a Word version of the document she intended to submit such that she could at least attempt to integrate it into the PTS form and provide L----'- responses to C-----'- claims. That document was the unsigned Addendum to the PTS.

The Court questioned C----- as to these assertions, and C----- agreed she was not willing to meet with L----, asserting this was because she had sent the email described by Ms. Swasey and did not get a substantive response and because she had determined it would be a waste of time because L---- had no incentive to negotiate.

The Court noted it had issued an Order requiring the completion of the PTS and participation in a settlement conference and C----- was not free to ignore those requirements simply because she did not believe they would be useful. Further, the Court noted that there must be some factual issues that are not disputed and could be addressed via pretrial discussions rather than the parties having to present evidence as to relatively straightforward issues. The undersigned determined that the trial would be continued and the parties required to participate in a settlement conference in an attempt to resolve or narrow the issues. The Court also denied C-----'- Motion related to the removal of L---- from the marital home.

Shortly after the pre-trial conference the Court heard from Megan Walstrom, Esq., that mediation had been attempted but was unsuccessful. The Court therefore scheduled trial for December 7, 2021 and the pre-trial conference for November 2, 2021.

Prior to the pre-trial conference, the Court received a new PTS from C-----. The document was over 60 pages long, single spaced, and included largely argument and attacks rather than financial facts and figures and positions as to ownership and division of marital property. Ms. Swasey noted that she had just received the lengthy document a few days before the pre-trial conference and therefore had not had the opportunity to review and provide her client's responses to same.

The Court noted that despite the undersigned's statements at the prior hearing as to the likelihood of agreement on basic issues, it appeared from C-----'- PTS that there was still not a single issue in agreement. C----- agreed. The undersigned pointed out it would be shocking if there were not a single back account, retirement account, or credit card whose existence was undisputed. As such, the Court stated that if the undersigned determined after trial that there are in fact basic issues about which there is no dispute and for which C----- simply refused to concede agreement, thereby necessitating the presentation of testimony and evidence on clearly undisputed issues, C----- would likely be charged legal fees.

L---- filed a Motion for Continuance on November 19, 2021, asserting that she had fallen and broken her arm and may need surgery and further asserting that daily activities were difficult such that her ability to assist counsel in preparing for trial would be challenging. The Court denied the Motion and instead scheduled the hearing to be held entirely by Zoom.

On December 10, 2021, C----- filed another motion requesting that the Court reinstate her as the sole occupant of the former marital residence. L---- filed a response in opposition to C-----'- Motion on December 23, 2021. The Court again denied C-----'- Motion on December 28, 2021, noting that the issue of possession of the real property would be addressed at the ancillary proceeding.

The Court heard testimony over the course of three days. The first hearing occurred on December 7, 2021, the second on February 28, 2022, and the final on March 24, 2022. C----- appeared self-represented and L---- appeared represented by Kara Swasey, Esq. for all three proceedings.

Following the trial, the Court ordered the parties to submit written closing arguments and Wright charts and, at L----'- request, agreed to consider forms of order prepared by the parties. Although the Court very clearly required the parties to limit their closing arguments to 10 pages, C----- exceeded this limit. Nonetheless, the Court considered her closing argument, but did not consider any new arguments, assertions, or evidence that were not properly presented at trial.

On July 22, 2022, the Court issued a Letter Decision and Order requiring the parties to submit specific documents that had been referenced in testimony but not entered into evidence. The parties promptly provided the requested documents. The Court has entered some of those documents into evidence subject to the opportunity for the parties to object within 10 days if they have an evidentiary basis to do so. L----'- evidence of the cell phone purchase is entered as L----'- 21 and C-----'- evidence of deposition payments to L---- is entered as C-----'- 46. The Court notes that at least some of the requested documents had apparently been submitted to the Court's evidence mailbox, due to the proceedings taking place by Zoom.

DISCUSSION

December 7 Hearing

The Court held its first hearing on the matter on December 7, 2021, with testimony from C-----.

C----- averred that she owned the marital residence jointly with a former paramour prior to L---- moving into the residence in March 2009. L---- had sold her home in Wynnewood, Pennsylvania and used funds from that sale to purchase her interest in the marital home in 2010. The parties refinanced the home into C-----'- and L----'- name and they split the approximately $100,000 down payment roughly equally.

C----- averred that in the 15 months or so that L---- resided in the residence prior to purchasing her interest in it, C----- covered the entirety of the home expenses. She also testified that she made significant investments in the home prior to L---- purchasing it.

In response to L----'- assertion that the parties agreed to split the costs of the significant renovations completed on the home prior to their marriage, C----- disputed that any such agreement was made and averred that the renovations were a joint venture for the parties with no agreement for repayment. C----- also asserted that although L---- paid the bulk of the costs for the renovation, she contributed financially and in other ways, asserting that she paid all of the mortgage payments in 2013 and until the parties' marriage in 2014,[8] in addition to making payments directly to the contractors. The first such payment was made in August 2013 for

[8] Petr. Exh. C3, C4, and C5

$2,700,[9] the next was in November 2013 for $6,000,[10] and the last was in January 2014 for $1,218.[11]

C----- also averred that she contributed to the renovations via her manual efforts, as she packed up everything from the garages and the kitchen and moved those items into the basement and garden shed, covered the rest of the house in plastic to protect it from dust and debris, packed up the hallway closet, taped the pantry cabinets and covered them with plastic, and vacuumed each weekend to get the dust up. C----- asserts that upon completion of the renovations, she put everything back in its place and cleaned. She also testified to a portion of the back yard that had been torn up by the contractors which she addressed by planting grass and perennials and raking the area out to put compost and seed down.

C----- also testified that asbestos was found in the hall closet and basement ductwork during the renovations and she paid for the asbestos abatement[12] as well as the required air quality monitoring thereafter.[13]

C----- also testified to work she did on the house following the renovations, including repainting the master bath,[14] rebuilding the basement stairs, installing foam insulation and rat wire,[15] and repairing the guest bathroom due to a toilet leak that damaged the flooring and wooden subfloor. C----- testified that she tore the damaged flooring out so the bathroom was prepped for repair.[16] C----- also testified to a large amount of work she did to the exterior of the home, including fixing the two front doors which had rotted from an active termite infestation.

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[9] Petr. Exh. C9
[10] Petr. Exh. C10
[11] Petr. Exh. C11
[12] Petr. Exh. C7
[13] Petr. Exh. C8
[14] Petr. Exh. C15
[15] Petr. Exh. C16
[16] Petr. Exh. C17

C----- asserted that L---- neglected and abused the home after C----- was forced to leave. As one example of that neglect, C----- testified that in August of 2020, when Delaware was hit by Hurricane Isaias, the basement of the home was flooded such that the HVAC system was largely under water. C----- introduced into evidence photos of the basement taken during the inspection for the home appraisal which show the water line from the flooding.[17] C----- averred she had reached out to L---- when the storm was approaching to make her aware that she needed to ensure the sump pumps were in working order, but L---- ignored those emails.[18] C----- also testified that during the inspection she found that numerous plants and flowers she had planted around the home had been cut out and weeds were growing in their place. She introduced numerous photos which she showed areas of the yard covered by ivy and/or weeds where she asserts gardens had once existed.[19] She further averred that a neighbor had given her some leftover hardscaping stones that she used to redo the front garden beds and that she had also built a stone path from the back to the front yard. C----- testified that the path was no longer visible as of the inspection date because of how high the grass and weeds had grown.[20]

C----- further alleged that L---- would regularly leave food items all over the home, which attracted rats, mice, and ants, and that the rats and mice left feces all over the basement which C----- had to address.

C----- also asserted that L---- had dissipated C-----'- pension earnings by refusing to sign and thereby delaying C-----'- choice of a pension option in 2017. C----- averred that she wanted to choose the 50% lump sum payout with the 50% joint and survivor annuity, but L---- would not sign the paperwork unless C----- chose the option that would provide L---- with a 100% survivor

[17] Petr. Exh. C26
[18] Petr. Exh. C43-44
[19] Petr. Exh. C27-29
[20] Petr. Exh. C21

benefit upon C-----'- death, despite the fact that C----- was low on funds and this would reduce the monthly payments she would receive from the pension.[21] C----- claims that by the time L---- agreed to sign the documents, interest rates had risen such that her lump sum payment was $166,062.58,[22] as compared to the $175,798.81 she could have received.[23] In addition to losing this money on the lump sum payment, C----- claims that the choice of providing a 100% joint and survivor annuity reduced her monthly pension payment from $1,250.50[24] to $1,190.45.[25] C----- argued that L---- received a similar cash out offer when they were initially married and she did not prevent L---- from doing as she chose with her money, which L---- ultimately took and placed into her own retirement account.[26] C----- claims she lost a total of $39,926 due to L----'- actions, between the lower lump sum payment, the three month delay in starting to receive her pension, and the $60 less per month over the remainder of her lifetime, based on C-----'- assessment as to same.

C----- testified regarding the whistleblower settlement she received following her termination from A------ H------- and asserts the settlement was due to her termination after she told employees to evacuate from a location based on environmental concerns. The total payout was $316,000 and was paid to her in two checks, which C----- agreed were for lost wages as well as 1099 income to cover her legal expenses. C----- further averred that she and L---- never had joint accounts and the money was, therefore, never comingled.

C----- testified that she used these funds to buy things that benefitted both parties as well as to pay off one of L----'- credit cards. C----- averred that the Honda Ridgeline truck was

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[21] Petr. Exh. C30 and C31
[22] Petr. Exh. C33
[23] Petr. Exh. C30
[24] *Id*.
[25] Petr. Exh. C32
[26] Petr. Exh. 34

purchased using money from her whistleblower settlement money and that although it is titled in both parties' names, the truck should be C-----'- alone without setoff given that it was purchased with non-marital funds.

C----- also testified that L---- withheld her stimulus funds and she seeks repayment of that amount. C----- asserted she had not received a stimulus check and upon reaching out to the Internal Revenue Service ("IRS"), she was told that she qualified for the stimulus payment and that a payment card had been mailed to her home address, which was the marital home at which L---- was residing. The IRS also told C----- that the check was mailed on May 22, 2020 and in July, C----- received a letter from the IRS saying the card had a balance of $2,400 on it and had not been activated.[27]

C----- also asserts she is due money from L---- due to L---- using taxes withheld from the whistleblower funds to cover L----'- taxes.[28] The first check for the whistleblower payout was issued in 2016 and C----- averred that $29,500 was withheld for federal taxes. She asserts she learned in 2018 that due to this payment of taxes she had been due an $11,000 refund in 2016, but L---- had this money forwarded to prepay the jointly filed 2017 taxes. C----- testified that in 2017 there was an additional overpayment of $1,720 which was combined with the $11,000, such that a total of $12,720 was forwarded to pay the jointly filed 2018 taxes. C----- asserts that she never saw this refund and it all went to L----.

The Court also heard testimony from M--- L--- N----, a witness for L---- who performed a home appraisal. Ms. N---- is a college graduate who worked for MBNA for 5-6 years before receiving her license to appraise homes in 2003 and then her certification in 2007. Ms. N---- testified that she has been working in the housing business for over 20 years and has completed

[27] Petr. Exh. C36
[28] Petr. Exh. C39-41

appraisals of about 60 homes per month over the course of that time in addition to testifying in Family Court previously. Ms. N---- was qualified as an expert regarding real estate appraisals.

Ms. N---- testified that she completed an interior and exterior inspection while L---- was present on January 18, 2021 and valued the marital home at $385,000.[29] In her assessment, although there was some deferred maintenance that needed to be completed on the home, it appeared to be largely maintained.

Ms. N---- averred that she completed a second appraisal on the same day to determine the impact of the renovations on the home's value. Neither appraisal gave value to the garages or sheds because they were not livable and they did not have an all-weather surface for cars to access them, so they could not be considered garages. She found the value of the home would have been $325,000 if none of the renovations had been completed.

On cross-examination by C-----, Ms. N---- testified that she had not been made aware of any flooding in the basement that would have impacted the HVAC and testified that she had not looked for any evidence of a flood in the basement. She further averred that a comparison of sales of homes in the area is the best approach for this type of real estate appraisal as compared to a cost-approach, which Ms. N---- testified is better used for new construction. Ms. N---- also testified that no value was added for the landscaping done on the home, as this only adds curb appeal and does not increase the value of the home itself.

During the hearing, C----- expressed concern that stucco repair work was needed on the marital home and L---- was not addressing same, while L---- asserted that when she has had contractors come to the residence for various reasons, C-----, who quite obviously keeps a fairly consistent watch of the house, would threaten the contractors such that they refused to continue

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[29] Resp. Exh. L1

working. As such, the Court issued an Order on December 8, 2021 prohibiting C----- from addressing any parties at the marital residence; requiring that C----- identify a contractor to give an estimate on the stucco repair; and requiring that C----- obtain the first three pages of the pension document she attempted to enter into evidence at the hearing.

February 28 Hearing

The Court held its second day of trial on February 28, 2022. At the outset of the hearing, C----- testified briefly on direct and then was cross-examined by Ms. Swasey.

On direct, C----- described a deposit made to L----'- Schwab IRA in 2018 for $6,066.[30] C----- asserted that although the IRA was pre-marital, this deposit was made during the marriage and therefore should be considered marital. In addition to the deposit made to the Schwab account, C----- alleged that L---- made a $20,000 deposit to her pre-marital Roth IRA during the marriage, specifically in December of 2014, of which she is entitled to a portion. In addition, C----- alleged she was owed a portion of a $25,000 deposit to L----'- Vanguard retirement account in 2019.

On cross-examination, C----- agreed that L---- helped with the whistleblower case, asserting that she initially hired a law firm in Washington, DC to help her but she ultimately had to let them go because she had $40,000 in legal bills in four months and could not afford to proceed with the case. At that point, L---- agreed to help for a few months and assisted C----- in obtaining her settlement. C----- further agreed that her social security wage statement and her tax documents showed the $316,000 she received as income, which was split in equal parts for 2016 and 2017.[31]

[30] Petr. Exh. C37
[31] Resp. Exh. L6

C----- agreed that L---- paid for the depositions and that she was to pay L---- back, but she asserted she had already done so. C----- testified that she gave L---- a check for between $700 and $900, a check for $5,000, and a final check for $2,500 after the final settlement came in.

C----- agreed that she did not work during the marriage, as she was fired from A------ in March 2014 and the parties were married in May 2014. C----- received unemployment as of March 2014 and while she testified to looking for work as a lab tech from 2014-2016 as well as applying for positions at employers such as Whole Foods and Wegmans, she was unable to find employment. C----- entered into evidence a list of her efforts to find employment.[32] Upon questioning by Ms. Swasey, C----- agreed that prior to the marriage she ran a part time massage business for 13 years but did not return to that work after she was fired from A------.

C----- agreed that she paid off home equity lines of credit with equity from the home during the 2010 refinance and that she took a $46,200.25 loan from her 401K as part of her down payment on the home. As of the date of marriage, the loan had a balance of $32,142.09 and as of L----'- date of separation, the loan had a balance of $13,882.22.[33] The loan was paid in monthly payments, but C----- agreed that she defaulted on the loan in 2018 and this created a taxable event for the parties.[34]

Ms. Swasey questioned C----- as to her position that the date of separation is July 1, 2017. C----- testified that the parties were attending marital counseling well into 2018 but she believes the July 1, 2017, date is a reasonable date of financial separation.

[32] Petr. Exh. C42
[33] Resp. Exh. L4
[34] *Id*.

Ms. Swasey questioned C----- regarding the balance on the Costco Anywhere Visa Card by Citi ("Costco Citi Card"), noting that the statement breaks down which user has charged each expense on the card post-financial separation. C----- agreed that she was an authorized user on the card during the marriage and that the statement split purchases based on the user, but she did not agree to the balance being split based on the statements, as she asserts there is spending on the card attributed to her that benefited both parties.

C----- agreed on cross that the Honda Ridgeline was purchased during the marriage, is jointly titled, and is worth $35,000, but asserts that she left the vehicle off of her Wright Chart because she purchased the car with her whistleblower funds.

When asked if she was seeking a split of any of the bank accounts, C----- testified that she was only looking for reimbursement for her legal expenses and disagreed that there were any jointly held bank accounts during the marriage. C----- agreed she had a number of accounts in her name as of L----'- asserted date of separation, including a healthcare savings account. C----- agreed that her Fidelity HSA account balance as of December 31, 2017 was $8099.57,[35] that her Wells Fargo account (----) balance as of December 26, 2017 was $21,375.16,[36] and that there was $78 in the savings account associated with the checking account.[37]

C----- agreed that L---- paid insurance on both vehicles following separation but did not agree that L---- was due a credit for same, arguing that L---- asked her to switch her car insurance to Liberty Mutual in 2010 and volunteered to pay the premiums so she could get an umbrella policy and bundle discount under her business account. C----- also asserted that she

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[35] Resp. Exh. L5
[36] Resp. Exh. L3
[37] Resp. Exh. L3

now has insurance on the Ridgeline and provided notice of that coverage to L---- by sending it to her former attorney, Mr. Gagne, who then shared it with Ms. Swasey in September 2020.

C----- testified that she could not recall who paid the mortgage payments in 2019 but asserted that she paid at least 5 in 2019 and three in 2020. C----- agreed that she did not pay the Delmarva bill since L----'- date of separation on December 31, 2017, but she claimed she paid some of the Comcast bills because L---- charged those on the Costco Citi Card and C----- paid that card in full each month.

Upon questioning regarding L---- paying her health insurance premiums post-separation, C----- asserted that L---- agreed to pay the 2019 premiums on C-----'- behalf since L---- had registered C----- against her wishes and without her knowledge. C----- agreed that beginning in 2017, she received a $275 per month subsidy for insurance premiums for L---- and that she kept these reimbursements for herself. C----- asserts she did so because of the damage to her health that L---- caused due to stress and because L---- depleted marital assets.

Ms. Swasey also questioned C----- about a cell phone L---- purchased for C----- in November 2018 for $999. C----- agreed that L---- purchased the phone on C-----'- Verizon account but asserted that L---- is not due a credit for those payments, for several reasons. First, C----- argued that L---- is not due a credit for the phone purchase because L---- purchased a new phone in 2017 on the Costco Citi Card and C----- paid the balance that included that purchase. Second, C----- avers that she ultimately paid some of the post-separation monthly service payments because L---- would charge those payments to the Costco Citi Card, which C----- paid off. Finally, C----- argues that L---- is not due a credit for the monthly payments because she asked L---- on multiple occasions to reach out to Verizon so the parties could set up separate accounts, but L---- refused to do so.

C----- agreed with Ms. Swasey that she is currently receiving $1,190 per month from her pension and $2,003 in social security a month. She supplements her monthly income and pays her legal fees using her 401K.

The Court then heard direct testimony from L----, who testified that she met C----- online in early 2006 when C----- was working as a lab tech at H------- A------ and had a massage business on the side. L---- was and remains Of Counsel with ----- and ---, but she was living in Wynnewood, Pennsylvania prior to purchasing an interest in the marital residence in 2010.

L---- asserts she did not take any ownership of the Arden residence until resolving issues she perceived as needing correction. L---- found that the survey of the home had the property protruding off of its parcel and that there was a gas tank in the ground of the home that needed to be removed. She testified that she worked with the trustees of Arden to have the gas tank removed and the survey of the home corrected, at which point she felt comfortable purchasing an interest in the home. L---- sold her home in Lower Merion in March 2009, receiving approximately $206,000 for the equity in that home and using some of those funds to purchase her interest in the Arden home in June 2010.[38]

L---- testified that there was also a lot of work to be done on the home after she purchased it. She avers that she never offered to cover the cost of the renovations in their entirety or that those payments were a gift to C-----. Rather, L---- testified that she intended for C----- to share in the cost of the renovations or pay her back. She agrees that she and L---- made various decisions regarding the renovations together, such as choosing the countertops and cabinets.

L---- testified that the parties shared ordinary monthly expenses. L---- liked to have expenses deduced automatically from her bank account or credit card so she knew they were

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[38] Resp. Exh. L7

being paid on time. L---- agreed she wanted to have an umbrella policy for car insurance and homeowners' insurance to save money and ensure the premiums were paid in a timely manner.

The parties were married on May 24, 2014. L---- testified that they had no income at the time because C----- had been fired and L---- was not working, and although she profited over $200,000 from the sale of her home, the stock market was tanking and the parties were forced to hunker down and watch their spending. L---- testified that nonetheless, in late 2015 the parties chose to take a vacation and in late 2016, C----- purchased the Honda Ridgeline and a "fancy" telescoping lens for a vacation to Spain they took that same year.

L---- asserted that although she was trying to keep spending low, C----- spent money at a level that constituted dissipation of assets. She testified that C----- told her that she was going to take the car and her new camera to go bird watching in Corpus Christie, and further asserted that C----- never invited her to join the trip. L---- averred that C----- also purchased concert tickets for $750 per person, a plant stand that was over $800, and a wheeled garden truck that is listed on Gardener's Supply for several hundred dollars. She averred that at one point the wheeled truck needed a tire replaced but C----- simply rolled it to the curb for trash rather than replacing the tire.

L---- testified that in 2017, the relationship deteriorated and C----- began having separate meals for herself. L---- agreed that C-----'- doctor told her that she needed to drop some weight and this was the impetus for C----- having her own meals, but she also asserts it was the beginning of them moving away from one another, such that they would eat separately rather than their prior practice of going to the Arden Guild Hall or out with friends for dinner. The parties took a vacation to France during that time period to try to rekindle their relationship, but L---- testified that nothing improved or brought them closer.

L---- asserted that she developed a cough while the parties were in France and she had been unable to get rid of it even after returning to the United States. She asserts that upon returning home, C----- kicked her out of the bedroom because of her cough. L---- further testified that on Thanksgiving, C----- made herself a completely separate dinner and did not want anything to do with L----. According to L----, it was clear by the end of 2017 that C----- did not want her to return to the master bedroom and during this timeframe C----- had a “meltdown” and told L---- she wanted a divorce. L---- averred that she uses December 31, 2017 as the date of separation because she was out of the couple’s bedroom and their marriage was very much on the rocks by that time and the parties were leading largely separate lives.

L---- testified that she and C----- had separate health insurance plans in 2017, but despite the parties’ financial separation, she added C----- to her health insurance in 2018 and 2019 and paid the premiums for both parties. L---- further asserted that while she was paying both parties’ premiums during this time, C----- received subsidies through her A------ retiree healthcare plan that were intended to offset the costs of insurance premiums for both parties. L---- requests that C----- reimburse her for the payments she made for C-----’- healthcare premiums in 2018-2019 in the amount of $12,382.26 for 2018 and $11,986.14 for 2019, for a grand total of $24,368.40. L---- also requests that she be paid the $275 per month A------ H------- subsidy that C----- received for L----’- healthcare premiums for 2018 and 2019, and she requests that she be indemnified for any liability due to subsidies kept by C----- post-divorce.

L---- agreed that she had no income from 2013 through 2016. She asserts this was partly because she took the Delaware Bar Exam in 2011 and then went on to work for Delaware Volunteer Legal Services to complete the clerkship requirement, in addition to overseeing the renovations of the house in 2013. L---- asserts she also took on C-----’- whistleblower case at the end of 2014 and in 2015 she took depositions of 13 individuals, responded to a summary judgment motion, and attended hearings with C-----. L---- also testified she had a successful career and felt she was at a point where she could choose whether to take a case.

This was the first marriage for the parties and neither of them has children. L---- testified she is 66 and takes blood pressure and cholesterol medicine, and although she has had some medical issues come up that need to be addressed, there are no issues that would relate to the division of the marital estate. L---- further averred that C----- is 65 and in decent health with similar issues arising now and then but is mostly healthy.

As it relates to the marital home, L---- testified that it was titled in both parties' names and held as joint tenants with rights of survivorship. The appraisal of the home for the refinance in June 2010 was $287,000. L---- testified that she wrote a check for $51,528.53 and C----- wrote a check for $48,450 to accomplish the refinance. L---- averred that the current balance of the mortgage on the home totals $145,369.[39]

L---- entered into evidence a list of itemized payments she made for the home improvements completed in the 1-2 years prior to the parties' marriage.[40] The itemized list totals $142,126.85 in payments made by L----, although L---- agreed during the hearing and in her closing that one $2,500 payment was accidentally listed twice, such that the balance should be $139,626.85. L---- asserted that C----- was working during the renovations and that she would call C----- if things came up for which she wanted to ger her opinion. L---- testified that the parties would shop on the weekends for items such as cabinets, flooring, and granite for the kitchen counters. L---- disagreed with C-----'- assertion that she paid about 20% of the

[39] Resp. Exh. L9
[40] Resp. Exh. L8

renovation expenses and asserted that she estimates C-----'- contributions amounted to less than $10,000. L---- agreed that C----- paid for the asbestos abatement, although she disputed its cost.

L---- testified that she made it clear to C----- that her payments for the renovation were not a gift and that she would only advance the funds with the understanding that C----- would be responsible for half of the cost. L---- agreed they never reduced this agreement to writing.

L---- requested that the Court award the home to her because she loves the community and has invested significantly in the property. L---- further requested that the Court take into account that she had almost paid off her mortgage at her former residence.

L---- noted some items in the home that are in disrepair, such as stucco on the side of the house and an area over the kitchen door that needs to be repaired because the roof above it was leaking. While L---- testified that these are normal repairs any home would require, she asserts that some of the repairs have become larger issues because of C-----'- lack of cooperation with L----. L---- averred that she hired professionals to do landscaping around the home but C----- showed up and forced them off of the property. L---- also hired a pest control company in January 2022 and asserts that when they were at the home, C----- similarly showed up threatening to call the policy on them despite this Court's December Order requiring C----- to stay away from the home.

As to C-----'- claim that she caused damage to the property by ripping things out of the garden and not properly maintaining the yard, C----- testified that she "tried" with the garden and did nothing intentional to harm it. She noted that she has run the lawnmower and moved the fig trees to the garage to protect them. L---- further asserted that she hired landscapers to cut back things she believed were overgrown, and at times perhaps they overcut things.

Regarding C-----'- claim of flood damage in the basement in Summer 2020, L---- agreed the basement had flooded and testified that she did take steps to ensure the sump pumps were operating, as indicated in the emails C----- entered into evidence.[41] L---- asserts she made the insurance company aware that the HVAC needed to be fixed as a result of the water rising above it. Although the HVAC went out again a few months after it was fixed, L---- testified she had another company replace additional components on the system and has not had a problem since.

With respect to the parties' vehicles, L---- testified that she drives a Honda Civic that was C-----'- pre-marital car and is titled in C-----'- name only. L---- averred that she was driving a VW station wagon when the parties met and C----- was driving a truck that gave out, requiring her to purchase the Civic in about 2007. C----- started driving the VW, however, and L---- drove the Civic. L---- asserts that the parties continued doing so before and after the marriage until the VW gave out and C----- purchased the Ridgeline. L---- agrees to C----- keeping the Ridgeline, with the value offset against the value of the Civic, which she will retain if transferred into her name.

As it relates to her bank accounts, L---- testified to the date of separation values of her Wells Fargo, Schwab, Capital One, and Vanguard Accounts and testified that these accounts should be divided per the percent distribution.

L---- testified to seven retirement accounts in her name, all of which are pre-marital. L---- responded to C-----'- claim that she is due a portion of deposits to three of those non-marital accounts that were made during the marriage. L---- testified that as to the October 2018 deposit of $6,066 to her Schwab account, this was after the parties were financially separated and as a result, C----- is not due any of those funds. As for C-----'- claim to a portion of the $20,000

[41] Petr. Exh. C26

deposited into L----'- Roth IRA in December 2014, L---- testified that this was not a contribution at all, but rather a rollover that occurred in December 2014 from her SEP IRA to her Roth IRA. L---- submitted evidence showing the transfer from one account to the other on the same day.[42] C-----'- final claim is to a contribution of $25,000 to L----'- Vanguard IRA in 2019. L---- again asserts that this is both a post-separation transaction that C----- is not entitled to and that in any event, the transaction is a non-issue because she only took the $25,000 out of the account with the understanding that she had cash coming in and could put the money back into the Vanguard IRA within the 60-day rollover period, which she did.[43]

L---- agrees she is not due any portion of C-----'- pension since it was pre-marital, and she denies that she owes C----- anything as a result of the pension election she selected. L---- asserted she believed she was helping C----- reach a reasonable decision as it related to collecting her pension and that ultimately C----- agreed that it was reasonable to take a little less per month so there was a benefit to L---- in the event that something happened to C-----.

L---- asserted that although C-----'- 401k is pre-marital, payments on two loans taken from the 401k were made during the marriage and therefore should be considered marital property. L---- also asserts that she gave C----- $1,500 in September 2015, $200 in February 2016, and $1,000 in March 2016 to assist with payments on the loan.[44]

L---- testified that the balance of the Costco Citi Card as of December 28, 2017, the closest statement to L----'- asserted date of financial separation, was $4,847.69. She averred that while the card is in her name, C----- was an authorized user and continued using this card after the date of separation. L---- further asserts that the credit card statement shows which user

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[42] Resp. Exh. L13
[43] Resp. Exh. L15
[44] Resp. Exh. L16

charged any given amount to the account. L---- therefore argues that she should be repaid for 100% of whatever was charged by C----- post-separation. L---- entered into evidence the statements for the credit card showing the charges broken out by authorized user on the card.[45]

L---- testified that she purchased C----- a phone and paid for the phone service and she requests to be repaid for this in the amount of $2,255.09, although she later amended this amount after an inquiry by the Court as is addressed below.

In addition to other expenditures for which L---- is seeking reimbursement,[46] L---- requests that she be reimbursed for the cost of a storage unit from June 2019 until March 2020 because C----- refused to allow her to keep her property in the parties' shed. In total, L---- asserts she is due $37,624.77 in post-separation credits.[47]

L---- argues that she should be reimbursed for court fees and costs because C----- has not followed the Court's orders, has caused delays, and has presented voluminous records to the Court and opposing counsel, much of which was not relevant.

Finally, L---- requests the two-list method for dividing the personal property and suggests that any disagreement be sent back to the parties' previous mediator to try to resolve the issue quickly and at low cost. L---- also testified that in Summer 2021, when the Court permitted C----- to bring a private investigator to the house to go through personal property, C----- removed things from the home and L---- was unable to see exactly what was and was not being taken, and she believes that C----- removed a bunch of files. As a result, L---- requested that any distribution of personal belongings be carried out responsibly and that the Court prohibit C----- from coming to take whatever she would like.

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[45] Resp. Exh. L17
[46] Resp. Exh. L18
[47] *Id*.

March 24 Hearing

The Court held its final day of trial on March 24, during which L---- was cross-examined and C----- testified in rebuttal.

On cross examination, L---- agreed that she worked intermittently and that since 2000, her earnings dropped significantly to the point that there were 5 consecutive years during which she earned less than $35,000 per year. L---- testified that she typically charges between $350-$375 an hour for her work as an attorney. Upon questioning by the Court, L---- testified that she believed C----- knew how much she was or was not working.

C----- questioned L---- regarding the hurricane in 2020 that caused flooding in the basement. L---- agreed that C----- had reached out to her to ensure that the sump pump and emergency back-up were in working order. L---- testified that she knew the storm was coming and that the main sump pump was working. She averred there was so much water it swamped the sump pump under the master bedroom, and it did not have a working backup. As a result, there was flooding that rose above the heater and an electronic air cleaner the parties had in the basement. L---- testified that she had the heater repaired and agreed that the battery still has not been replaced on the main sump pump or the backup under the kitchen. L---- testified that she had plumbers who never gave her any indication that there was any urgency to replacing the battery and averred that she had properly cared for and maintained the systems in the home.

L---- also testified about the home appraisal, asserting her understanding that the garages were not given any value because they were set in an enclosed backyard. C-----, however, argued that they should have been given value and that the home is worth more now than when the appraisal was completed, since demand is currently greater than supply.

On rebuttal, C----- testified that she had $59,000 in taxes withheld from her whistleblower settlement checks, some of which was forwarded to the 2018 taxes. She further averred that L----'- accountant broke out how much L---- was underpaid and how much C----- was overpaid, noting that L---- underpaid $12,000 in 2018 and C----- overpaid $9,000 in 2018. C----- believes she should be reimbursed for these funds.[48]

C----- ended her testimony by reiterating to the Court that it has always been her dream to live in the Arden community and she wants nothing more than to keep the house, although she has concerns about her ability to do so given her legal fees. She requested the Court award her the home nonetheless and requested the Court order a date by which L---- is to have her personal belongings out of the home.

FACTUAL FINDINGS and HOLDINGS

As the narrative above indicates, the parties' relationship progressed through several phases with differing legal statuses, and the parties make arguments as to their legal positioning for each. The Court will address several preliminary claims and then consider each of the phases and the claims within them.

Marital Home Background and Equity Determination

As stated in the previous Order, the Arden residence is considered marital property and will be disposed of via the considerations found in Title 13, Chapter 15.[49] The parties remain in disagreement with respect to who should keep the residence, what credit or consideration should be given for various expenditures and efforts related to the home, and how the equity should be divided.

[48] Petr. Exh. 40.
[49] See C----- v. L----, Del. Fam. CN19-04414, 20-10564, Ranji, J. (July 14, 2020).

C----- and a former paramour purchased the home in 2002 and C----- lived there until the Court ordered her removal and gave L---- exclusive use and possession in May 2020. L---- bought into the home in 2010 when C----- refinanced and her former paramour was removed from the mortgage and paid for her interest. L---- contributed $51,528.53 to the refinance of the home while C----- contributed $48,450 and the parties took a mortgage of $200,000. L---- testified, and C----- did not rebut, that the property had no equity at the time of the refinance other than their down payments.

L---- asserts that the home value to be used in determining the current home equity is the $385,000 appraised value provided by Ms. N----.[50] C----- asserts that the value of the home is $335,000[51] and that Ms. N----' appraisal is too high, citing her view that the home should be valued as a 2-bedroom residence, that the sheds should be considered garages, and that the market has changed since the January 2021 appraisal was completed.

The Court finds that Ms. N----' appraised value of $385,000 is the appropriate value to use for the home. Ms. N---- is qualified as an expert in home appraisals and she responded to and explained the basis for valuing the house as a 3 or 4 bedroom home without a garage. The Court found Ms. N----' reasoning and approach to be reasonable. As it relates to the passage of time, if C----- wished to provide evidence as to the change in value of the home since the appraisal was completed she was free to do so. She did not, however, provide any evidence to rebut the January 2021 valuation as the most recent valuation available to the Court.

[50] Resp. Exh. L1
[51] This value appears to have come from an appraisal C----- had completed and attempted to have moved into evidence. The Court sustained L----'- objection to same, based on C----- not having arranged for the testimony of the individual who prepared the report such that he/she could be subject to cross-examination.

The mortgage on the property as of November 2021 was $145,369.[52] Using the most recent and reasonable home value of $385,000 and the most recent mortgage value of $145,369, the Court concludes that the home equity is $239,631.

Date of Financial Separation

Identifying a date on which the parties should fairly expect that they are living financially independent of one another is made more difficult in this case by the parties' continued cohabitation and by their practice throughout the marriage of maintaining separate bank accounts. C----- claims the date that should be used by the Court is July 1, 2017, when she and L---- began sleeping separately, while L---- claims the date of separation is December 31, 2017.

The parties agree that L---- stopped sleeping in the bedroom with C----- in mid-2017 and that the initial reason for doing so was that L---- had developed a coughing and/or snoring problem that made it difficult for C----- to sleep. The parties also agree that they never resumed sharing a bedroom.

L---- testified that in the months between July 2017 and December 2017, C----- began making and eating her meals separately from L----, although for some period of time L---- attributed this to the fact that C-----'- doctor had told her that she needed to begin managing her weight better. L---- agrees that at some point it became clear that she and C----- were permanently separating, but she argues this occurred closer to the end of the year and that C----- told her she wanted a divorce.

Although C----- asserts that July 2017 should be used as the date of financial separation due to her and L---- no longer sleeping in the same bedroom, she also agrees that the reason for the separation at that time was L----'- cough. C----- also asserted that the parties attended marital

[52] Resp. Exh. L9

counseling “well into” 2018. Furthermore, the Court finds the pension email that C----- submitted into evidence dated October 2017 relevant to this issue. The email was sent by C----- to L---- and it addresses C-----’- options for starting her pension and the associated survivor benefits. C----- signed the email “love, B------,” and the contents of the email inquire into L----’- position on the survivor benefits available to her as C-----’- spouse.[53]

While the Court finds that the parties’ relationship was in decline following their decision to not share a bedroom in July 2017, the Court cannot find that the parties were clearly determined to separate financially or legally at that time, particularly given the stated reason for their decision to sleep separately and the continuation of marital counseling and pension planning months after that date. The Court therefore finds that December 31, 2017 is the more reasonable date of separation.

C-----’- Claims for Home Repairs and Damages

C----- spent a significant portion of her testimony presenting evidence of her efforts at repairing and maintaining the home and her claims that L---- caused damage to the property. C-----’- testimony and evidence included such items as payment for a tree service after a tree fell on the home during the marriage and the purchase of items such as doorknobs and duct covers.[54] In addition, C----- described and introduced pictures of projects she completed such as landscaping and gardening, maintaining HVAC equipment, painting the bathroom, and tearing out flooring and subflooring.[55] C----- requests that she be awarded $345,360 for her maintenance efforts as well as for her preparation of meals and completing the laundry.

[53] Petr. Exh. C31
[54] Pet. Exh. C23 – C25
[55] Pet. Exh. C15 – C22

It is clear to the Court that C----- cared very much for the property and that she spent a significant amount of time completing home projects, both inside and outside of the home, as well as responding to maintenance issues. The Court views such efforts, however, as reasonable when owning and living in a residence of this size and age, rather than viewing them as property improvements for which credit is due. C-----'- efforts will be considered in the percentage split discussed below, but the Court will not give her a dollar-for-dollar credit for these efforts and payments towards the safety and enjoyment of the home in which she resided – and certainly not at the value she asserts without any support to justify same.

Phase I: Pre-June 2010

C----- argues that she made significant investments in and improvements to the residence prior to the parties becoming joint owners in June 2010 and that she paid the mortgage on the residence from the time L---- began living there in March 2009 until L---- became a joint tenant in June 2010.

As stated during the hearing, the Court will not give credit for expenditures and improvements made prior to the parties becoming joint tenants, thereby triggering the ability to treat the home as marital property. As a practical matter, these expenditures were made solely for C----- and perhaps her former co-owner's enjoyment, and as a legal matter they are simply expenditures made by a homeowner prior to any legally cognizable link to the parties' marriage. Furthermore, C----- gained the benefits of any improvements made via the refinancing that occurred in 2009 when the property was refinanced such that L---- could become a co-owner.

The Court will consider C-----'- prior ownership of the property and her love of the community in determining the property's disposition, but no credit will be given for her investments prior to the parties becoming co-owners.

June 2010 to May 2014

Home Improvements

Between the time that L---- became a joint owner of the property and the time of the parties' marriage, L---- made significant investments in renovating the home, beginning in 2012. L---- testified that the parties renovated the kitchen, replaced the fireplace and converted it to gas, put new wood flooring in the home, and converted garage space into living space. L---- testified and provided evidence showing that she paid $139,626.85[56] in improvement costs resulting in the value of the home increasing by $60,000.[57] Although these investments were pre-marital, L---- asserts that they should be considered by the Court since the property became a marital asset. L---- asserts that she should be credited for her payment for improvements to the home by either awarding her $60,000 for the increase in the property value resulting from the improvements or by awarding her one-half of the amount she spent on the renovations. L---- requests that these amounts be credited to her, with the remaining equity in the home split pursuant to the division identified by the Court below.

C----- agrees that L---- paid the bulk of the renovations but asserts that she also made monetary contributions as well as contributions in the form of manual efforts in support of the renovations. C----- asserts and provided evidence supporting her payments for hardwood flooring,[58] payments to Liberty Station for basement work on the home,[59] and other payments for the balance of the work, totaling $13,240,[60] as well as paying for asbestos abatement and

[56] Resp. Exh. L8. The Court notes that at the March 24, 2022, hearing, L---- testified that she recalled receiving a tax credit for the energy efficient window replacements that were installed in the home. She did not recall the amount of the credit, but asserted she would have gotten a credit of up to $1,500 and therefore the window replacement cost listed as part of the renovations needed to be adjusted. This is a relatively *de minimus* amount and given the Court's holding as to the treatment of the renovations investments, it does not change the Court's approach or holding.
[57] Resp. Exh. L2
[58] Pet. Exh. C10
[59] Pet. Exh. C11
[60] Pet. Exh. C12

monitoring.[61] In addition to these monetary contributions to the renovations, C----- asserts she put significant manual effort into preparing for, cleaning up during, and replacing items after the renovations.

C----- also asserts she paid all of the mortgage payments in 2013 as well as the mortgage payments up to June of 2014.[62] C----- claims this was part of the agreement as it related to the improvements made on the home and testified to her belief that she was paying the mortgage while L---- was covering the renovations.

L---- responded that although C----- paid the mortgage during this timeframe, L---- covered the costs of utilities, house and car insurances, and groceries. L---- also argues that normal living expenses should not be credited in the way an investment that increases the value of a joint asset should be.

While L---- agrees there was no written contract indicating the nature of the parties' arrangement relating to these investments, she claims she made it clear to C----- that her investment was not a gift and was instead a cost to be split among them. C-----, in contrast, claims her understanding that the investments were being made jointly given that they co-owned the home together, and that there was no requirement for the funds to be paid back.

The Court cannot find that L---- has proven that there was an agreement for her to be repaid one-half of the cost of the improvements. The Court finds it hard to imagine that such an agreement would have been made regarding such a significant expense and that not only was the agreement not reduced to writing, but there is not a single text message, email, or other communication to reference the parties' arrangement.

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[61] Pet. Exh. C5 and C8
[62] Pet. Exh. C3 and C5

The Court also declines to provide a dollar-for-dollar credit to L---- for her investment in what ultimately became marital property. This property is subject to the considerations found in 13 *Del. C.* §1513 and the Court will consider L----'- pre-marital investment in property that ultimately became marital in determining the split of the equity, as discussed below.

Similarly, the Court will consider C-----'- contributions to the renovations when deciding the percentage split. The Court agrees that day to day pre-marital expenses split by the parties during the renovation period do not give rise to a cognizable claim for credit.

Tax Credit

C----- asserted that following the housing market collapse in 2008 there was a first-time home buyer tax credit for which L---- qualified but she did not. C----- requests that the Court require L---- to pay her one-half of the $8,000 homebuyer tax credit L---- received in 2010 based on her purchase of the residence.

The Court does not find a basis to award C----- one-half of a premarital tax credit L---- received based on her status when purchasing the residence. This request is therefore denied.

May 24, 2014 to December 31, 2017

The next period to be considered is the time from the parties' marriage to their date of financial separation.

C-----'- Whistleblower Settlement

As stated above, following her 2014 termination from her job at A------, C----- pursued a whistleblower case against her former employer. Although C----- initially had outside counsel represent her due to L---- not being comfortable with practicing in this area of the law, L---- ultimately agreed to assist C----- in the depositions and preparation of the case. C----- was awarded $316,000 in damages which were paid in two equal payments of $158,000, one each in 2016 and 2017.

C----- asserts that the settlement funds are non-marital since the incident giving rise to the cause of action occurred before the parties' marriage. As such, C----- requests credit for various payments she made during the marriage using the whistleblower funds and asserts that certain items she purchased with those funds should be treated as non-marital. L----, however, claims that the settlement funds were received during the marriage for the purpose of covering lost wages during the marriage and as such should be treated as marital.

C-----'- social security wage statements for 2016 and 2017 reflect that of the $158,000 that C----- received each year, $118,000 was employment income.[63] The remaining $40,000 per year was 1099 income intended to cover C-----'- attorneys' fees.

The majority of the whistleblower award was for income loss following C-----'- termination, during which time C----- had been unable to work despite attempting to find employment. As such, those payments provided income that was indeed missing from the marital unit due to C-----'- termination and those funds will be treated as marital.

As for the attorneys' fees, C----- testified that she initially hired attorneys to represent her, but ultimately L---- agreed to do so. Any payments to attorneys or for various deposition costs were made with marital funds, and the cost of the representation was significantly reduced by L---- taking over the case. As such, the portion of the whistleblower award that was to cover legal fees is also a marital asset.

[63] Resp. Exh. L6.

C-----'- Request for Pension Credits

The parties agree that C-----'- pension is entirely non-marital, as she did not work and contribute to her pension during the marriage. C----- claims, however, that she was damaged by L---- causing her to receive less pension income than she would have upon reaching payout status.

L---- denies pressuring C----- into choosing the option selected and asserts she simply was trying to encourage C----- to slow down a bit and make a wiser financial decision as it related to her pension. L---- testified that she also thought that they would be continuing to live their lives as a married couple and therefore believed that taking a bit less per month so that there would be a survivor benefit made sense.

The Court does not agree that C----- was forced into choosing an option that would cause her financial harm. The Court finds it reasonable that a spouse would prefer an option that provides them with a survivor benefit in the event the other passed. If C----- did not agree with that arrangement or had some dispute as to the state of their marriage such that L---- should not have received such a benefit, the burden was on her to refrain from signing any documents choosing same and seek legal relief if needed.

C-----'- 401K

As with her pension, C-----'- 401K is entirely premarital and L---- does not assert any claim thereto except for the repayment of two loans taken out of the 401K.

The first loan of $46,200.25 was taken in May 2010 and C----- used those funds to provide the down payment for the 2010 marital residence transaction. The date of marriage loan balance was $32,142.09 and the date of separation balance was $13,882.22. L---- therefore asserts the marriage paid $18,259.87, without interest, towards C-----'- 401K.

The second 401K loan was taken in 2016 and totaled $23,000. L---- claims the date of separation balance was $17,362.49 and therefore the marriage paid $5,637.51 into C-----'- 401K.

L---- entered into evidence a handwritten check register showing approximately $12,000 in payments to C----- over the course of 2015 and 2016, which she claims were to help C----- pay the 401k loan debt.[64] L---- further asserted and produced evidence of a default that occurred in 2018 resulting in a taxable event for the parties.[65]

C----- does not dispute the existence or balances of the loans as asserted by L----. She asserts, however, that she arranged for the loans to be auto-deducted from her personal checking account and that the loans were paid entirely from non-marital funds, including income tax refunds, her whistleblower award, and her healthcare spending account. C----- introduced into evidence a spreadsheet which lists various sources of funding that she asserts are non-marital, along with the amount of the loan that was to be paid monthly from June 2014 through August 2018.[66] The spreadsheet shows total "premarital income" received in this timeframe of $323,407, and total payments on the 401k loans in this timeframe of $35,717.

First, by far the most significant source of "premarital income" identified by C----- is the whistleblower award. As stated elsewhere, however, this award was made in lieu of income that would have been received during the marriage and therefore it is marital income.

Other "premarital income" sources identified by C----- are equally unpersuasive, such as the Unemployment Insurance received from June through October 2014, which is also marital income, as well as the 2014 federal tax refund, at least half of which is marital. C----- also identifies withdraws from her employer healthcare savings account as a source of funding for the

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[64] Resp. Exh. L16
[65] Resp. Exh. L4
[66] Petr. Exh. C38

repayment, while repayment of a 401k loan would appear to be well outside of the strictures of such an account.

C----- also identifies other arguably non-marital sources, such as her 2013 tax refund and her pension payments beginning in February 2018, but the pension payments are post-separation and L---- is making no argument for those payments to be treated as marital, and the 2013 tax refund is $386, which is *de minimus* in light of the size of the loans and repayments. In addition, there is no evidence that C----- kept this funding separate from other funds and then accessed that specific funding for the purpose of paying the 401k loan, such that the pre-marital nature of the payment would be preserved.

As to the initial loan, the Court finds that the reduction in balance between the date of marriage and date of separation represents a marital contribution to the 401k and it will be divided via the percentage split, plus or minus gains/losses through the date of distribution, which shall occur via QDRO.

As to the 2016 loan, however, it was a debt taken during the marriage. As such, it is a marital debt and none of the payments during the marriage will be credited to either party.

The Court further finds that L---- has not produced sufficient evidence of harm as a result of the 2018 default, nor did L---- raise this argument in her closing. As such, there will be no award for this claim.

Financial Accounts

The parties each had a number of bank accounts they maintained during the marriage, and those accounts will be divided as of the date of separation based on the percentage distribution. While the majority of those accounts are in the name of one party or the other, L----

asserts there is a Capital One account (0630) with a balance of $130.98 that is joint,[67] and which she does not believe C----- has ever put money into it. C----- asserted that this was never her account and she never put any money into it or took any money out.

With the exception of the Capital One account (----), the parties' accounts shall be divided based on the percentage distribution as of the date of separation. Because C----- has disclaimed any interest in the joint Capital One account, L---- shall keep the account and remove C-----'- name from it. The accounts and balances to be divided are as follows:

- L----'- Wells Fargo (-----): $6,611.78[68]
- L----'- Schwab: $62.84[69]
- L----'- Capital One Checking (-----): $743.31[70]
- L----'- Vanguard: $106.89
- L----'- Wells Fargo Business Account (-----): $12,115.08
- C-----'- Wells Fargo Checking (-----): $21,375.16[71]
- C-----'- Wells Fargo Savings (-----): $78
- C-----'- Fidelity HSA: $8,099.57

L----'- Roth IRA Deposit

L---- holds a total of 7 retirement accounts in her name, of which C----- makes a claim to a portion of three. The first of these relates to a deposit of $20,000 into a Roth IRA that C----- asserts L---- made during the marriage.

L---- agreed that on December 31, 2014, she deposited $20,000 into her Roth IRA, but asserts this was simply a rollover she made to take advantage of the tax benefits, since she did not have much income that year. L---- submitted into evidence both a statement from the Schwab account as well as the Roth IRA showing that on December 31, 2014, $20,000 was

[67] Resp. Exh. L12
[68] Resp. Exh. L10
[69] Resp. Exh. L11
[70] Resp. Exh. L12
[71] Resp. Exh. L3

withdrawn from the Schwab account and deposited, on the same day, to the Roth IRA. C----- submitted no evidence or put forth any argument as to why this withdraw of pre-marital funds and subsequent deposit of those funds makes them marital.

Based on the evidence submitted, the Court finds no basis for a claim to the deposit identified.

Vehicles

The parties own two vehicles. The first is a Honda Civic that was C-----'- pre-marital vehicle and is now driven by L----. The second is a jointly titled Honda Ridgeline with a stipulated NADA value of $35,000. This vehicle was purchased during the marriage with funds from C-----'- whistleblower lawsuit.

C----- claims that L---- had her own vehicle before driving the Civic, but it flooded multiple times and instead of purchasing a new vehicle, she simply began driving the Civic. C----- further alleges that L---- was in an accident in the Civic and despite receiving insurance money for it, she never had it repaired and she now wants an offset.

C----- requests that the Court allow her to keep the Honda Ridgeline without offset given that it was purchased with whistleblower funds.

L---- testified that she is fine to keep the Civic and requests a $3,300 offset as well as a division of the value of the Ridgeline based on the percentage split.

The Court has already found that the whistleblower funds are marital. Therefore, the Ridgeline is marital while the Civic is not.

L---- is to keep the Civic and C----- is to keep the Ridgeline, as the parties have already agreed. Each party shall be responsible for removing the other from the title of the vehicle they retain within 30 days of the date of this Order. L---- is due a portion of the value of the

Ridgeline based on the percentage split of the marital assets. C----- will be credited with the full value of the Civic being retained by L----, since that vehicle is premarital.

Costco Citi Card Debt

The parties have a Costco Citi Card in L----'- name with C----- as an authorized user. L---- testified and entered the statement into evidence indicating that the balance as of the date of separation was $4,847.69.

This amount shall be split pursuant to the percentage determined below.

Deposition Expenses

The parties agree that L---- paid the deposition expenses for C-----'- lawsuit and that C----- agreed to reimburse her for same. L----'- deposition expenses totaled $7,927.80.[72] C----- testified, however, that she repaid L----, and she provided evidence of three checks written to L---- which she asserts were for that purpose.[73] The checks were for $750 in August 2016, $5,000 in January 2017, and $2,000 in April 2017. L---- was unable to say what those checks were for and the total of $7,750 is sufficiently close to the cost of the depositions that the Court finds those checks were for that purpose. L----'- request for repayment of those deposition expenses is therefore denied.

Financial Dissipation

L---- claims that C----- dissipated the marital estate by spending money they did not have. She provided several examples of the asserted dissipation, which included C----- purchasing a plant stand for $800, C----- purchasing tickets for a concert at the Mann that were $750 per person, and C----- attempting to dispose of a wheelbarrow rather than replacing the wheel on it.

[72] Resp. Exh. L19
[73] Petr. Exh. C46

C-----, on the other hand, claims dissipation of assets because she was under the impression that L---- was working as a lawyer and earning income during the marriage when in fact she was not.

The Court finds all of these arguments to fall far short of the showing required for a dissipation claim. L----'- claims as to the purchases made by C----- are *de minimus* and do not amount to dissipation. The Court will also not make a finding of dissipation on the basis of one party choosing not to work, particularly when the other party remained in the marriage, was also unemployed throughout the marriage, and when the non-working party shared expenses during the marriage using pre-marital savings.

January 1, 2018 to June 2020

From the date of financial separation through the divorce and up to the date of physical separation, the parties continued to cohabitate and they request various credits for payments each made for the other's benefit during that time. Unfortunately, although the Court found above that the parties financially separated at the end of 2017 in that each was aware they were living independent lives financially, the parties' spending during this time did not appear to reflect any clear way of assigning responsibility for their shared living expenses. The parties maintained separate bank accounts even when married,[74] and during this 2½ years of post-financial separation cohabitation they continued to spend money from their individual accounts on purchases and services that sometimes benefitted both of them. The parties provided evidence of payments they each made assertedly for the other's benefit, ranging from mortgage payments to health insurance premiums, from offsite storage to car insurance, and from plumbing repairs to purchases of light bulbs, appliance filters, and door stops.

[74] With the exception of one bank account that was in both parties' names but which C----- denied having any knowledge of or using and which had a *de minimus* amount of money in it at the time of financial separation.

Two issues are of concern to the Court in attempting to assign credits during this period. The first is that there are a number of months for which neither party is requesting a credit for monthly household expenses. For example, while C----- asserts that she made six mortgage payments in 2018 and five in 2019, L---- asserts no mortgage payments in 2018 and only two in 2019. This obviously leaves almost half of the months in these years of financially separate cohabitation unaccounted for, and the Court finds it quite unlikely that the parties simply did not pay their mortgage half of the time. Similarly, L---- requests credit for the Delmarva bill for 3 months in 2018 and C----- requests none, leaving 9 months in 2018 unaccounted for. That being said, it is each party's burden to convince the Court that they are due credits for such items, and it does not appear either party did so as to those missing months. As such, the Court will divide the expenses presented subject to the discussion below, while acknowledging that this clearly leaves qualifying expenses unaccounted for.

The second issue of concern is that while there is theoretically not much difference between seeking credit for payment of an electric bill versus payment for a light bulb – both of which are currently before the Court – granting credits for *de minimus* expenses such as the latter seem to this Court to be unrealistic. While payment for a light bulb may be just as necessary as payment for the electricity to power it, it is simply untenable to expect that a court would be able to go back in time and account for every expenditure spouses or ex-spouses choose to make during whatever timeframe they remain cohabitants despite the demise of their relationship. This is not necessarily a problem of the parties' choosing, as both may have good reason to be reluctant to leave the marital residence of which they are an owner, but it is also true that the Court does not have a perfect solution for every unfairness that may present itself. The simple fact is that when individuals choose to remain cohabitants without an agreement as to how expenses will be divided and accounted for – certainly a tall order for individuals who are not likely in the best position to treat one another fairly and reasonably – they are also choosing to live with the considerable uncertainty of whether all they put in to that living situation will be recaptured by a court that simply cannot recreate every expenditure or effort made during that time.

Having considered the pending requests in light of those challenges, the Court considers several factors relevant in determining which expenses will be credited when parties are cohabiting pending finalization of matters ancillary to their divorce. Those factors include whether the expense benefitted the non-paying party; whether the expense is either necessary or agreed upon by both parties; whether the expense is easily quantifiable; the size of the expenditure; and whether the expenditure is a regular/recurring expense. In this case, the mortgage payments, car and health insurance, utilities, and cell phone bills are expected, necessary, quantifiable monthly expenditures and as such, the Court will credit the party incurring the expense. In addition, any larger repairs necessary to maintain the residence, such as the plumbing and chimney cap bills, will be credited. Smaller, individual expenditures will not be credited, nor will regular maintenance efforts such as landscaping and smaller repairs. As such, the claims for reimbursement for purchases such as light bulbs, door stops, dog food, and outlet covers will not be credited, as these are relatively minor expenses for which it would be impossible for the Court to fully and fairly credit the parties over a 2½ year period without ultimately having to account for grocery purchases, household cleaning efforts, and whether one party ate food purchased by the other.

Mortgage and Utility Payment Credits (Delmarva, Comcast)

Each of the parties claims some responsibility for paying the mortgage and utilities during this post-financial separation period, although several months are left "unclaimed" based on the parties' testimony. Given that the parties resided together, they will split the costs for these expenditures evenly and each will be credited with the payments indicated below.

C----- testified that she made six mortgage payments in 2018, at least five in 2019, and three in 2020. L----'- summary document setting forth her requests for credit indicate that she paid the mortgage for November and December 2019 and January through March in 2020. Each will be credited with the payments claimed.

L---- asserts that she paid the Delmarva bill from October 2018 through March 2020 and that she paid the Comcast bill from January 2019 through March 2020. C----- agreed that she did not pay the Delmarva bill but claimed that L---- used the Costco Citi Card to pay the Comcast bills and that C----- therefore paid for many of those expenses via her post-financial separation payments on that card.

L---- will be credited with the utility payments indicated, with C----- responsible for one-half of the amounts claimed. The Costco Citi Card payments made by C----- are accounted for separately.

Larger Household Repairs

C----- claimed and submitted evidence of post-separation expenditures for larger home repairs that benefitted both parties and will be credited to her. On February 7, 2018, C----- paid Twaddell Plumbing $816 for a vent and shower diverter and on September 13, 2018 and October 17, 2018 she paid a total of $1009 for a chimney sweep and cap.[75]

[75] Petr. Exh. C----- 35

Car Insurance Credits

C----- agrees that L---- paid her car insurance following the date of financial separation. Her only argument against L---- being credited for maintaining car insurance on the vehicle C----- was driving was that she did not ask L---- to do so, and that L---- wanted to take over the payments 12 years ago as part of an umbrella policy. L---- agreed she initially took on the payments so that they would be included in a presumably less expensive umbrella policy, and she asserts she continued to make the payments post-separation due to her name also being on the Ridgeline.

The Court finds no basis to deny L----'- claim for credits due to the post-separation car insurance payments on the car driven by C-----. As such, she will be credited $2,198 for one-half of the car insurance premiums.

Health Insurance Credits

L---- claims she paid approximately $24,368 for C-----'- healthcare premiums in 2018 and 2019 and requests credit for those amounts. In addition, she requests $6,600 for the 24 months of $275 subsidies C----- received to assist in paying her spouse's insurance premiums.

C----- does not deny that L---- paid her insurance premiums during the timeframe asserted but argues she should not have to credit L---- for the payments because L---- enrolled her in Highmark BCBS through the Affordable Care Act Marketplace without her knowledge or permission in 2018. C----- also asserts that when L---- signed her up for insurance, she did so by listing C----- as her dependent under her small business plan so L---- could write off the payments as a business expense.

While the Court is not clear as to why L---- obtained coverage for C----- post-separation, whether it was done without C-----'- permission, or why C----- would object to same, it is clear that C----- had no other health insurance and it was therefore beneficial for her to be covered by the insurance purchased by L----, for which she paid nothing while collecting her employer-provided subsidy to offset the cost of the premiums for her and L----. The Court holds that L---- will be credited for the payments she made for C-----'- health insurance post-separation as well as for the funds C----- received from her employer to offset the cost of L----'- insurance premiums.

L----'- Purchase of Cell Phone for C-----

L---- asserted that she purchased a cell phone for C----- and covered C-----'- portion of the charges associated with that account in 2019. She asserted the total cost of the phone and account charges was $2,255.09 and requested the Court reimburse her for same.

Following the Court's request for additional clarification and documents,[76] L---- reduced the amount for which she was requesting reimbursement to $1,755.09, comprised of $499 for the cost of the phone and $1,256.09 for the phone service. Through counsel, L---- asserted that she made a lump sum payment of $499 to the cost of the phone in 2020 rather than continuing to pay the monthly installment cost.

As noted above, C----- argues that L---- should not be credited for cell phone expenditures because she purchased L---- a new phone during the marriage, L---- refused to separate their cell phone accounts, and C----- paid some of the bills because they were charged to the Costco Citi Card that C----- paid.

As to C-----'- first argument, the fact that a phone for L---- was purchased during the marriage does not offset a phone purchase by L---- for C----- after the parties financially separated. The first is a marital expense while the second is not. As to the second argument,

[76] See C----- v. L----, Del. Fam. CN19-04414, 19-23930, 20-10564, Ranji, J. (July 22, 2022).

even were the Court to find that L---- refused to separate the accounts, there was no harm to C----- as a result and in fact she benefitted from having her cell phone as part of a larger plan. That argument provides no basis to not reimburse L---- for this post-separation expense that helped to financially support C-----. And as to the third argument, the Costco Citi Card expenditures are accounted for separately below.

Based on the testimony of both parties and the evidence submitted, the Court agrees that L---- is due reimbursement for the post-separation expenditures for C-----'- cell phone in the amount of 1,755.09.

L----'- Storage Unit Costs

L---- asserts that she accrued costs due to having to move her personal belongings to a storage unit in June 2019 because C----- "threw a fit" about her belongings being kept in the shed or garage. L---- alleged that C----- used a pry bar to pry off the front of a file cabinet and then proceeded to take various items that belonged to L----. She further asserts that C----- took items out of the shed and put them on the lawn, including old files of L----'-, camping equipment, and the frame of a brass bed, among other items. L---- claims that through March 2020, she had spent $1,215.99 that she would not have otherwise had to pay if she were able to keep her personal belongings in the home.

C----- agreed that she removed several of L----'- items and place them on the lawn, asserting she did so because L---- was keeping junk stashed in piles that were attracting rodents, such that she found feces from rodents in the shed.

The Court agrees that L---- is due a credit for the storage costs. The Court does not consider the presence of rodents in a garage or shed to be so concerning as to justify denying a joint owner of the property the right to store items in there.

Moving Expenses

C----- was ordered to leave the home after she engaged in behavior that the Court found could lead to physical or emotional harm. C----- now asserts that L---- should be responsible for the cost of her having to move out of the home.

The Court does not agree. C----- was required to leave the residence as a result of her own actions, and there is simply no basis to expect L---- to pay the resulting costs.

Costco Citi Card Debt

As discussed above, the marital debt on the Costco Citi Card will be divided pursuant to the percentage distribution based on the date of separation balance. The parties agree, however, that each of them continued to use the Costco Citi Card post-financial separation and that the statements delineate who is responsible for each charge.

The parties request credit for the post-separation payments they made on the credit card that included charges by the other party, but the evidence provided does not appear sufficient to allow the Court to divide the post-separation charges and credit the payor. C----- provided proof of payments she made each month from April through June 2018, November 2018, and January 2019, along with a few of the credit card statements, asserting she did not have others to provide because she was unable to access the account.[77] L---- provided the credit card statements for the relevant post-separation months – including January 2018 through July 2019, at which point C----- stopped using the card – and those statements clearly indicate who charged each purchase.[78] L---- did not, however, provide evidence of who made the payments in that

[77] Petr. Exh. L45. The Court notes that this document was included in the exhibits C----- provided and was referenced during her testimony, but it does not appear to have been entered into evidence during the hearing likely due to an oversight by C----- in not making that request. Given her testimony and provision of documents, the Court has determined it will enter the documents into evidence subject to L---- having 7 days if she wishes to make an evidentiary objection to the Court considering same.
[78] Resp. Exh. L17

timeframe, and although L---- testified that she paid the monthly credit card payments post-separation payments, C-----'- evidence would appear to indicate that was not always the case.

Further complicating matters is the parties' agreement that although the statements delineate who incurred each charge, each of them charged items that benefitted the other, such that simply dividing the statements based on who incurred the charge does not sufficiently assign responsibility for the expenditures.

As it relates to the latter point, the Court holds that the parties will each be responsible for whatever they charged on the card. Going back now to divide every single expenditure between the parties for this18+ month period is simply not an exercise in which the Court will engage to try to undo the voluntary continued shared use of a credit card.

The Court will, however, credit whomever paid the monthly bills for the portion of that bill that was actually charged by the other party, if the parties wish to engage in the exercise of making that determination. Given the lack of documentary evidence necessary for the Court to do so, if the parties wish to engage in that endeavor, they will split the cost of an attorney to obtain the additional documentation needed to determine who paid each month's balance and calculate the net amount one party will owe the other. That amount will be added to the amounts owed as indicated in the Wright chart attached hereto.

<u>L----'- Retirement Account Deposits</u>

As noted above, C----- made a claim to a portion of three of L----'- retirement accounts. The first, addressed above, was based on a deposit made prior to the date of separation. The second and third transactions identified by L---- occurred after the date of financial separation.

C----- initially made a claim to $25,000 that L---- withdrew from her Vanguard IRA in 2019. L---- agreed she had withdrawn that amount, asserting she did so because she needed the funds and knew she had funds coming in to replace that amount within the 60-day rollover period.[79] During trial, C----- agreed that these funds were non-marital. The Court agrees and as such, the Court will not consider them further.

The last post-separation claim identified by C----- was a $6,066 contribution L---- made to her Schwabb SEP IRA in October 2018, which L---- asserts was applied to tax year 2017. L---- argues that this contribution is not marital as it was made post-financial separation, and L---- also asserts that C----- made a similar contribution, depositing $6,500 in her Fidelity account in early 2018 for tax year 2017.[80]

C----- and L---- ultimately agreed at trial that given the relative proximity in timing and amount of these funds, they should not be divided by the Court. The Court agrees, both based on the parties' agreement and the post-separation timing of the transactions.

June 2020 to Present

C----- requests reimbursement of $15,000 in damage to the home and its property for damage she alleges was caused by L----'- inability to adequately care for the home. This included assertions as to damage from flooding during the August 2020 hurricane, removal of plants and flowers, and unkempt outdoor walkways.

The Court finds that C----- failed to provide a basis for her to be credited based on alleged damages to the home caused by L----. C----- has not convinced the Court that any damages were caused, let alone that there is a basis to value any such damages at $15,000. At most, the Court finds that L---- was not as willing or able to maintain the home in the condition that C----- did, particularly as it relates to the landscaping. This difference in the parties' attention to things such as weeds, gardening, and maintenance of walking paths does not give

[79] Resp. Exh. L15
[80] Resp. Exh. L20

rise to a claim for damage to the marital asset. Furthermore, Ms. N---- testified that she did not observe any issues with the home maintenance that impacted her valuation.

Personal Property

L---- requests that the parties separate the marital property by the two-list method and that the parties be required to submit any disputes that arise to their former mediator for a decision.

The Court agrees with L----'- proposal and orders same, with the mediator having authority to make a binding decision if the parties are unable to reach agreement.

Home Based Law Practice

C----- asserted a claim that she was due some credit based on the fact that C----- operated her law practice out of the parties' residence. C----- argued that the use of the residence for business purposes increased their spending on utilities and wear and tear.

L---- denied that the minimal law practice in which she was engaged caused any cognizable impact on the parties' living expenditures at the home.

C----- offered no evidence of any financial impact caused by L---- working from the residence and in fact she made a dissipation claim based on her assertion that L---- was not actually working during this timeframe.

The Court cannot find that C----- is due any funds or consideration based on vaguely asserted financial impacts for running a law practice that C----- agrees was largely not actually "running" throughout the marriage.

Stimulus Funds

C----- claims that L---- received stimulus payments on her behalf that were sent to the marital residence. L---- did not deny receiving the payments of $2,400 and asserted only that C----- did not do her own due diligence to correct the situation.

C----- is due $1,200 for her portion of the stimulus payments.

Income Tax Refunds and Overpayments

The parties filed taxes jointly in 2016, 2017, and 2018, and separately in 2019. As stated above, C----- claimed that taxes withheld from her whistleblower checks in 2016 and 2017 led to credits which, without her knowledge, L---- had applied to tax years 2017 and 2018. C----- asserts this culminated in tax overpayments of which she never received the benefit, and which accrued to L---- instead.

A review of the tax returns and other documents prepared by the parties' accountant and entered into evidence shows that in 2016, the parties overpaid federal taxes by $21,475, and of that amount they took a refund of $10,475 while the remaining $11,000 was applied to the estimated 2017 taxes.[81] Similarly, Delaware state taxes were overpaid by $4,818, and the parties took a refund of $3,818 and applied $1,000 to 2017 taxes. For Pennsylvania state taxes, the entire $500 in overpayments was applied to 2017.

In 2017, there was a federal overpayment of $12,720, a Delaware overpayment of $1,633, and a Pennsylvania overpayment of $1,198, all of which were applied to estimated 2018 taxes.[82]

In 2018, the last year the parties filed jointly, there was a federal overpayment of $1,647, a Delaware overpayment of $420, and a Pennsylvania overpayment of $640. These overpayments were applied to 2019 taxes, but it appears they went entirely to L----'- tax

[81] Petr. Exh. C----- 39
[82] Petr. Exh. C----- 40

obligation.[83] L---- will be charged with receipt of these overpayments and C----- will be credited for her percentage of the asset distribution.

Percentage Split of Assets

The parties disagree on the split of marital assets. While C----- stated no specific position as to a percentage split, L---- asserts that a 60/40 split in her favor with a reversal on debts is equitable.

Having identified the marital assets and debts and their values, the Court now considers the factors of 13 *Del. C.* § 1513 in determining the percentage split.[84]

(1) *The length of the marriage.*

The marriage was relatively short, lasting approximately 5 years, although the parties had lived together for several years prior to their marriage.

(2) *Any prior marriage of the party.*

This is the first marriage for both parties.

(3) *The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.*

Both parties testified to having some concerns related to their health but neither had significant health issues and both parties are over 60 years of age and either fully or semi-retired at this point.

C----- asserted that she earns $36,989.40 annually between social security and pension, which she supplements with withdraws from her 401k. L---- asserted that she earns $82,000 annually derived from various sources including her work as an attorney, which can fluctuate based on whether she chooses to take on cases or not, as well as her social security.

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[83] Petr. Exh. C----- 41
[84] *Id*.

L---- is in a superior financial position to C----- based on her income and her ability, due to her experience as a successful attorney, to take cases when and if she chooses. C-----'- background does not allow her such flexibility and while C----- could arguably do massage work as she has in the past, the income from that work would not likely come close to the $350 per hour L---- is capable of earning.

(4) Whether the property award is in lieu of or in addition to alimony.

Neither party requests alimony in this matter.

(5) The opportunity of each for future acquisitions of capital assets and income.

C----- asserted in her testimony that she attempted to find another job following her firing from A------ but alleged that she had an incredibly difficult time doing so and was ultimately unable to do so. L---- agreed that C----- had taken steps to find another job after she was fired and although she claimed that C----- passed up one opportunity due to C-----'- safety concerns, the Court finds that C----- made reasonable efforts to find employment.

L---- is Of Counsel with ----- and --- and asserted during her testimony that she does not work much any longer and has the flexibility to choose what cases she may or may not take.

Given the parties' ages and financial status, it is unlikely that either party will acquire further significant assets. However, L---- still has the opportunity to earn income as the result of her legal career and her flexibility in working with ----- and --- and is, therefore, in a slightly better position to acquire future assets than is C-----.

(6) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker, husband or wife.

As described above, each party made contributions to the marital estate. C----- contributed largely via her efforts at maintaining and improving the property. C----- clearly invested time in doing home maintenance, including rebuilding the basement staircase, as well as working on landscaping projects that contributed to the parties' use and enjoyment of the residence. In addition, C----- owned the property for 8 years prior to L---- moving in, thereby contributing to the acquisition of the property by having owned and maintained it well before her and L----'- relationship. C----- also contributed funds to the renovations and living expenses, and C-----'- whistleblower award was an income source during the marriage.

L---- contributed significant finances to the marital property, most of which were premarital. L---- paid the larger portion of the parties' living expenses and the large majority of the renovation costs, while also overseeing the day-to-day renovation work. L---- also contributed her legal time and expertise to C----- in obtaining the whistleblower settlement and she took steps prior to her purchase of the home to address legal issues related to the property.

Both parties contributed significantly to the property but given her significant financial investment, the Court finds that L---- was the greater contributor, particularly to the marital home.

(7) The value of the property set apart to each party.

Each party has retirement assets set apart that are discussed below.

(8) The economic circumstances of each party at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live herein for reasonable periods to the party with whom any children of the marriage will live.

As noted above, L----'- current and potential income is greater than C-----'-, as are her retirement savings. C----- has a Fidelity A------ Savings Plan valued at $450,354 as of December

3, 2017, with an additional $166,062 having been deposited in February 2018 from C-----'- lump sum pension payment. C----- also has a pension from which she receives payment. L---- testified to having seven retirement accounts which, based on the values in the Ancillary Financial Disclosure Report, totaled approximately $837,000 as of February 2020.

L----'- economic circumstances are slightly better than C-----'-.

(9) Whether the property was acquired by gift.

No evidence was offered regarding property acquired by gift.

(10) The debts of the parties.

There do not appear to be significant debts for either party with the possible exception of attorneys' fees and the mortgage on the marital residence.

(11) Tax consequences.

No testimony as to tax consequences associated with the Court's decision regarding the division of marital assets was provided.

Conclusion Regarding Split of Marital Assets/Debts

Marital Home

As stated above, the marital home equity is set at $239,631. After considering the parties' testimony and evidence as well as the Section 1513 factors, the Court finds that the equity in the marital home will be split 65/35 in L----'- favor, based on her significant investment in same. The Court notes that based on Ms. N----' appraisal, approximately ¼ of the current $240,000 in home equity is due to the improvements largely funded by L----.

Remaining Marital Property and Debt

After considering the Section 1513 factors and the testimony and evidence offered, the Court finds that the remaining marital property will be split 55% to C----- and 45% to L----, with a reversal on the debts. While L---- contributed more financially during the marriage (aside from her investment in the residence, which is considered separately), C----- contributed more in terms of caring for the house and undertaking significant repairs and maintenance. Further, L---- is in a superior position in terms of earnings and retirement assets.

Award of Marital Home

Each party requests that they be awarded the residence subject to the mortgage and payment to the other party for their portion of equity in the property. Both profess a love for the Arden Village and for the home, and quite clearly each of them has invested time, care, and funds into it based on their belief that they would continue to reside there for years to come.

That being said, after considering the relevant factors and each of the parties' arguments as to this issue, the Court holds that L---- shall be awarded the residence. While the Court finds that C----- loves the property and did more in terms of physical caretaking, L---- also invested heavily in it, using a significant portion of the equity from the sale of her premarital home as well as her legal experience to purchase, improve, and address legal issues related to the property. Although the Court finds that these considerations slightly favor C----- keeping the home, concluding that her love for and prior ownership of the property slightly outweigh the impact of L----'- contributions, the Court also finds it quite likely that C----- would be unable to buy L---- out and financially maintain the property going forward.

C----- herself stated she did not know whether she would be able to afford the residence but noted she may be able to do so using monies she believed she would be due from L---- as a result of these proceedings. The Court has attached hereto a supplemental Wright chart, however, showing the financial outcome of awarding the residence to C-----. As evidenced by the Wright chart, if C----- were awarded the home she would owe L---- over $200,000, in addition to being fully responsible for the mortgage on income of less than $40,000 per year. The Court simply does not consider such an outcome feasible and finds it likely to result in protracted disputes and litigation and ultimately the sale of the house with neither party having the opportunity to reside therein – a result that, in the long term, does not serve either party well.

Attorney's Fees

Although Delaware statutes permit courts to "[a]ssess fees, costs, and fines; or remit them in proper cases…"[85] Delaware follows the "American Rule," which provides that "each party is generally expected to pay its own attorneys' fees regardless of the outcome of the litigation."[86] There are, however, several exceptions to this rule, including the bad faith exception.[87] "Although there is no single definition of bad faith conduct, courts have found bad faith where parties have unnecessarily prolonged or delayed litigation, falsified records[,] or knowingly asserted frivolous claims."[88] The Delaware Supreme Court has ruled that a party who has been litigious or unreasonable may be required to pay a portion of the other parties' fees in regards to the matter.[89] In *Hildick*[90], Judge Wakefield stated,

> The entire fabric of civil litigation is dependent upon the willingness of parties to settle cases at the earliest opportunity before trial and not to assert positions which are unreasonable or against decided case law. Parties and their attorneys must act in good faith in this respect and, conversely, a party who tenaciously adheres to an unreasonable position or one which is clearly against decided statutory or case law should not be able to avoid the consequences, one of which may be reimbursing the other party for counsel fees after the adverse judgment is entered by the Court.[91]

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[85] 10 *Del. C.* § 925(10). *See, e.g., L.B.R. v. R.F.K.*, No. CN02-10190, 2003 WL 22476199, at *1 (Del. Fam. Ct. Sept. 11, 2003).
[86] *Shawe v. Elting*, 157 A.3d 142, 149 (Del.), *cert. denied*, 138 S. Ct. 93, 199 L. Ed. 2d 28 (2017).
[87] *Id.*
[88] *Id.* (quoting *Johnston v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 546 (Del. 1998)).
[89] *K.B.S. v. F.R.S.*, 14 A.3d 619, 622 (Del. Fam. Ct. 2010).
[90] *Hildick v. Hildick*, No. 767-88, 1990 WL 15657, at *2 (Del. Fam. Ct. Jan. 2, 1990).
[91] *K.B.S. v. F.R.S.*, 14 A.3d at 622.

In *Mays v. Mays*[92], Judge Wakefield addressed fee awards in divorce ancillary matters:

> [W]ith respect to the counsel fee issue, 13 *Del. C.* § 1515 requires the Court to consider the financial resources of both parties. However, the Court does not believe that the provisions of that section are so restrictive as to prohibit the Court from assessing counsel fees against a party who, by reason of his or her conduct during the litigation, causes the other party to incur fees far in excess of those which would be charged by an attorney but for such conduct. If that were the law, a person with limited assets and income could bankrupt another party through improper and vexatious conduct resulting in fees far beyond the amount in controversy.[93]

This must, of course, be balanced with the recognition that "[T]he emotional turmoil present in most domestic litigation sometimes compels litigants to take unreasonable adversarial positions."[94]

In this case, while the Court is generally hesitant to engage in fee shifting, particularly when one party is self-represented, the Court finds that C----- acted unreasonably during the litigation and took actions that unnecessarily increased L----'- attorneys' fees, and the Court makes that finding at a clear and convincing standard.

C----- refused to complete the Ancillary Pre-Trial Stipulation prior to the pre-trial conference as required by this Court's Scheduling Order requiring same, choosing instead to develop a list of demands that she provided to L---- with her own deadline for a response and refusing to discuss issues thereafter. She refused to even attempt a meeting with opposing party and counsel as required by this Court's Scheduling Order, simply because she determined doing so would not be productive. After hearing the Court's explanation as to the reason for the PTS and its use in identifying basic issues on which the parties agree, C----- still completed an

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[92] Del. Fam., C.A. 1921—84.
[93] *E.M.K. v. G.A.G.*, No. CS03-07470, 2005 WL 3593473, at *2 (Del. Fam. Ct. June 13, 2005).
[94] *K.B.S. v. F.R.S.*, 14 A.3d at 622.

updated “PTS” that was 61 pages of argument and vitriol rather than attempting to set forth her positions in response to those set forth by L----.

C----- further took outlandish positions in her PTS, asserting, for example, that she was requesting over $180,000 in the property division as compensation for her efforts at house maintenance. Her closing argument increased that amount to an outrageous $345,260 for her efforts at laundry, making meals, and yard and household maintenance.

Further, C-----’- PTS still failed to identify a single financial or other fact set forth by L---- on which she was willing to agree. Yet, as predicted by the undersigned at the pre-trial conference, having held multiple days of trial there were in fact numerous assertions by L---- that C----- either agreed with or did not contest, including such benign issues as the existence of pension and 401k plans, the existence and date of separation balances of numerous bank accounts, the parties’ agreement as to repayment of the deposition costs, L----’- efforts in assisting C----- with her whistleblower action, the income (or lack thereof) throughout the marriage, and others. There is simply no reason C----- could not have sat down with L----’- counsel to go through such items and develop a set of stipulated facts, rather than having to present testimony and evidence as to those and countless other issues.

While C-----’- high volume of exhibits – totaling eight, 3-inch binders, only a fraction of which came into evidence – likely increased L----’- preparation time unnecessarily, and her at times unfocused testimony made the trial last longer than necessary, the Court would not award attorneys’ fees on those bases, as the undersigned considers those a reasonable consequence of unrepresented litigants who do not understand which information will be most relevant to the Court. C-----’- closing argument however, again showed that while C----- may have been confused by various aspects of the litigation, she is also unwilling to take reasonable and basic steps to comply with the Court’s requirements. At the end of the trial, the Court was extremely clear that while written closing arguments would be accepted, they must be no longer than 10 pages. C----- then proceeded to submit a 12-page, small font closing that included numerous issues never presented in C-----’- testimony.

Given these actions, the Court finds that C----- unnecessarily delayed litigation and caused L---- to incur additional attorneys’ fees by acting in bad faith and not complying with the Court’s instructions. Ms. Swasey may prepare an affidavit of fees related to her representation for the Court’s consideration.

ORDER

1. The parties have 7 days to notify the Court if they object to the evidence entered following hearing completion as identified in the Court’s Opinion. Any objection must be based on a recognized evidentiary rule. If there is an objection, the Court may schedule a hearing to address the narrow issues raised in the objection. The Court will consider attorneys’ fees related to any such objection the Court finds to be in bad faith.
2. The parties shall split the $239,631 in home equity 65/35 favoring L----.
3. The parties shall split the remaining marital assets 55/45 favoring C-----, with the reverse splits on debts.
4. The marital home is awarded to L----. She shall have 60 days to refinance the home or otherwise remove C-----’- name from it.
5. The $18,260 repayment of C-----’- 401k loan balance between the date of marriage and date of separation is a marital asset that shall be divided via the percentage asset split, such that L---- is due $8,217 with valuation as of the date of separation plus or minus gains/losses through the date of distribution. Ms. Swasey shall prepare the QDRO for that purpose.

6. The below marital bank accounts shall be divided pursuant to the percent distribution based on the below balances. L---- shall close the joint account and retain any balance remaining:
    a. L----'- Wells Fargo (-----): $6,611.78
    b. L----'- Schwab: $62.84
    c. L----'- Capital One Checking (-----): $743.31
    d. L----'- Vanguard: $106.89
    e. L----'- Wells Fargo Business Account (-----): $12,115.08
    f. C-----'- Wells Fargo Checking (-----): $21,375.16
    g. C-----'- Wells Fargo Savings (-----): $78
    h. C-----'- Fidelity HSA: $8,099.57
7. L---- shall retain the Civic. C----- is to transfer the title of the Civic to L---- within 15 days of this Order. The value of the Civil will be attributed to L---- with C----- given full credit for same.
8. C----- shall retain the Ridgeline and present the title to L---- for transfer within 15 days of this Order. The value of the vehicle will be attributed to C----- and split between the parties based on the percentage division of assets.
9. L---- is credited with one-half of the Delmarva and Comcast payments she made during the periods indicated herein.
10. C----- is credited with one-half of the $816 plumbing and $1009 chimney sweep and cap payments.
11. L---- is credited with one-half of the post-separation car insurance premiums.
12. L---- is credited $24,268 for C-----'- post-separation health insurance costs and $6,600 for the subsidies C----- received to offset the cost of L----'- insurance premiums. L---- shall not be responsible for any subsidies collected on her behalf after the parties' divorce.
13. L---- is credited $1,755.09 for the purchase of C-----'- cell phone.
14. L---- is credited with $1,215.99 for the costs incurred for storage rental.
15. C----- is credited with $1,200 for her portion of the stimulus payment received by L----.

16. C----- is credited with 9 months of mortgage payments made post-separation, which represents the difference between the 14 payments C----- asserted she paid and the 5 payments L---- asserted she paid in that timeframe.
17. L---- is credited with 45% of the $4,848 balance on the Costco Citi Card as of the date of financial separation.
18. C----- is credited with 55% of the following tax refunds which the Court finds were received by L----:
    a. $1,647 for 2019 federal taxes
    b. $420 for 2019 Delaware taxes
    c. $640 for 2019 Pennsylvania taxes
19. The parties are to separate the personal property using the two-list method. L---- shall create a master property list within 15 days of this Order and provide same to C-----. C----- shall review the list and add any marital property to the list and return same to L---- within 7 days. L---- shall divide the final list into two lists within 10 days of creation of the master list, and C----- shall select which list she wishes to keep. Items purchased by L----'- law firm and documents, records, and file contents pertaining to L----'- practice shall not be included on the list. Computers, printers, and electronic recording media used by L---- for business purposes but not purchased by the law firm must be paid for by L---- if she does not wish those items to be included on the two-list. Any disagreements as to carrying out these provisions shall be submitted to Ms. Walstrom for binding decision. Ms. Walstrom shall determine the split of her fees between the parties based on the parties' reasonableness and good faith efforts. C-----'- firearms must be transferred to her by a mutually agreed upon third party who is legally qualified to possess a firearm or, if the parties cannot agree on such an individual, the parties shall split the cost of a licensed private investigator to do so. Other property of C----- that remains in the home may be removed by her on dates certain as arranged by the parties. C----- and L---- shall each arrange to have a third party present to facilitate the removal of property. If the parties are unable to reach agreement on how to structure the removal of property, they shall retain Ms.

Walstrom or another attorney to mediate and ultimately make a binding decision on same. The costs to do so shall be evenly split between the parties.

20. If either party wishes to do so, the parties shall engage Ms. Walstrom to determine the amount owed to each for post-separation payments on the Costco Citicard, subject to the terms stated above. The attorneys' cost will be split between the parties and the net amount due to one of the parties shall be added to the amounts owed in the Wright chart attached hereto.
21. Ms. Swasey may prepare an affidavit of fees related to her representation of L---- for the Court's consideration.
22. Both parties are to cooperate in signing any documentation and taking other steps as necessary in a reasonable timeframe to complete the requirements of this Order.
23. As indicated in the Wright chart attached as Attachment A, C----- is due $36,051 from L----. L---- shall pay same within 30 days of this Order.

IT IS SO ORDERED.

/ Jennifer B. Ranji /
JENNIFER B. RANJI, Judge

JBR/cmm
cc: Counsel/Parties