

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.**

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June 8, 2026

In the Court of Appeals of Georgia

A26A0381. BYERS v. BYERS, II.

PADGETT, Judge.

We granted this discretionary appeal to review certain financial portions of the parties' divorce decree. On appeal, Danielle Byers (the "Wife") argues that the trial court erred by: (1) failing to consider Larry Byers, II's (the "Husband") stock awards as part of his income for purposes of child support; (2) finding that a portion of the Husband's retirement accounts were pre-marital; (3) failing to consider the Husband's "529 plans" as marital property; (4) failing to consider a high-income child support deviation given the parties' incomes; (5) awarding the Husband 70 percent of the marital estate; and (6) ordering the payment of an attorney's lien from

Wife's portion of the marital estate. For the reasons set forth below, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

The record shows that the parties were married in 2016 and have been living separately since 2022. The parties have one child together, D. B., who was born in 2017, and they both have children by other partners. The Wife filed this divorce action in May 2022. During a three-day bench trial, the parties presented extensive evidence which included their own testimony, a report and testimony of a special master appointed by the trial court, and testimony of the Husband's expert witness. The trial court then entered a lengthy divorce decree. As relevant for this appeal, the divorce decree ordered the Husband to pay the Wife \$3,089.00 per month in child support. The trial court also determined that the value of the marital estate was \$656,505.43, and awarded the Wife \$196,951.62 (30 percent of the estate), minus \$40,750.32 to pay an attorney's lien owed to the Wife's former attorney, resulting in the Wife's award being \$156,201.30.

1. The Wife argues first that the trial court erred by failing to consider some of the Husband's stock awards as part of his income for purposes of child support. We agree.

The special master prepared a report, as amended, which was introduced at trial. According to the amended report, the Husband, who is employed by Google,

receives a base salary of \$11,000.00 per month. He also receives quarterly commissions and bonuses. The special master calculated the Husband's 2023 annual income as \$958,226.01 and his 2024 income as \$1,009,022.54. The special master concluded that his current average monthly income is \$88,574.89. The special master included stock options from the Husband's employer in the calculation of his annual income. The following testimony from the special master was elicited at trial:

Q: Jumping back -- sorry for the back and forth -- to income briefly, I believe they are going to try to dispute that his stock options are income. In your view, would those be income for purposes of [OCGA §]19-6-15 or child support?

A: I looked in -- I pieced this thing together before I got the W-2 to what it was and then I got the W-2. This is the W-2 for 2024, and box one plainly states \$1,009,022.54. What's notable is, if this were unvested income, unvested stock, then it's required to be in box fourteen not in box one. Because it's in box one, it's earned income.

At trial, the Husband tendered an expert witness who was a certified public accountant and certified divorce financial analyst. The Husband's expert disagreed that all of the stock options should be included when calculating the Husband's income. Instead, the Husband's expert stated that stock was "eliminate[d]" as

income, and is “consider[ed] ... as an asset when vested” under the expert’s per coverture analysis.¹

The divorce decree states that: “The [Husband’s] gross income without his stock options was \$748,518.17 in 2023 and \$876,769.44 in 2024.” Later, the trial court noted, “[a]t trial, [Wife’s] counsel insisted that the [Husband] turn over his February 27, 2025 paycheck stub issued right before the continuation of the final trial on March 3, 2025, and the [Husband] complied by producing his most recent regular paycheck stub, his gross quarterly bonus paycheck stub showing his 4th quarter 2024 bonus (paid in 2025), and his vested stock options showing a direct deposit of \$0.00 The [Husband’s] year-to-date vested stock was \$8,547.10[.]” The trial court then concluded that the Husband’s income was \$67,564.48 per month according to his domestic relations financial affidavit prepared by his expert witness.

“In Georgia, determining each parent’s monthly gross income is the first step that a court must take in calculating child support under our child support

¹ The expert witness described the per coverture analysis as follows: “Regardless of how often it vests, coverture, which we use for family law, states that wherever we are in that timeline, in this case that one-year timeline ... that portion into the one year is considered marital. For instance, if we were at September 30th, that is nine months into that one year. If it were a one-year grant on January 1, that’s nine months in. ... Nine-twelfths or three quarters of that grant would be considered marital ... and one quarter would be considered non-marital. ... So in this case, that’s what we carved out, the non-marital, the non-vested portion according to coverture.

guidelines.” *Nelson v. McKenzie*, 364 Ga. App. 533, 534(1) (875 SE2d 515) (2022) (punctuation omitted). “Gross income ... shall include *all income from any source*, before deductions for taxes[.]” OCGA § 19-6-15(f)(1)(A) (emphasis added). Even inconsistent income must be considered by a factfinder. Specifically, OCGA § 19-6-15(f)(1)(D) provides that

[v]ariable income such as commissions, bonuses, overtime pay, military bonuses, and dividends shall be averaged by the court or the jury over a reasonable period of time consistent with the circumstances of the case and added to a parent’s fixed salary or wages to determine gross income.

“Adherence to these provisions is mandatory.” *Nelson*, 364 Ga. App. at 534(1). We review the trial court’s factual findings in this regard “under a clearly erroneous standard, while the trial court’s legal conclusions are reviewed de novo.” *Id.*

While the trial court was undoubtedly trying to accurately assess the relative financial position of both parties, it appears that the court seemingly excluded consideration of *some* of the Husband’s stock grants. However, the requirement is to consider all income, even variable income, as part of calculating child support. See OCGA § 19-6-15(f)(1)(D). By failing to consider the entirety of the Husband’s stock when calculating his income for the purpose of his child support obligation, the trial court erred. Accordingly, the trial court’s order is vacated and remanded for the trial court to consider the entirety of the Husband’s stock when calculating his income

for child support purposes. *Nelson*, 364 Ga. App. at 535(1) (trial court erred by failing to consider appellee's his long term incentive plan stock options as income for purposes of child support).

2. The Wife also argues that the trial court erred by failing to upwardly deviate from the child support guidelines. Because we have vacated the portion of the divorce decree calculating the Husband's income for child support purposes, we do not reach this issue. However, as stated in Division 1, determining each parent's monthly gross income is the first step that a court must take in calculating child support under our child support guidelines. *Nelson*, 364 Ga. App. at 534(1); *Gibson v. Fowler*, 375 Ga. App. 681, 684(1) (917 SE2d 363) (2025); OCGA § 19-6-15(b)(1). The court should then adjust the gross income where necessary based on factors not relevant to this appeal, and then add the adjusted income from each parent together. *Spirnak v. Meadows*, 355 Ga. App. 857, 866(4)(b) (844 SE2d 482) (2020); OCGA § 19-6-15 (b)(2)–(3). Trial courts then use this figure to determine the presumptive amount of support under the child support obligation table. *Spirnak*, 355 Ga. App. at 866(4)(b); OCGA § 19-6-15 (b)(4), (o). After calculating the presumptive amount, the trial court may apply any credits, reductions, or downward or upward deviations. *Spirnak*, 355 Ga. App. at 866(4)(b); OCGA § 19-6-15(a)(10), (b)(5)–(8).

When the parents' monthly income exceeds \$40,000, the trial court "may consider an upward deviation to attain an appropriate award of child support for high-income parents which is consistent with the best interest of the child." OCGA § 19-6-15(i)(2)(A). See *Cousin v. Tubbs*, 353 Ga. App. 873, 887(3)(b) (840 SE2d 85) (2020). "If a court decides that a deviation from the presumptive child-support amount is warranted, it must make certain written findings of fact as set forth in OCGA § 19-6-15(c)(2)(E)." *Cousin*, 353 Ga. App. at 887(3)(b). "Ultimately, whether special circumstances make the presumptive amount of child support excessive or inadequate and whether deviating from the presumptive amount serves the best interest of the child are committed to the discretion of the court." *Id.* (citation modified). Importantly, "in the absence of any mathematical formula, fact-finders are given a wide latitude in fixing the amount of ... child support, and to this end they are to use their experience as enlightened persons in judging the amount *necessary for support* under the evidence as disclosed by the record and all the facts and circumstances of the case." *Id.* If, upon remand, the trial court deviates from the presumptive amount of child support, it must do so in accordance with these principles.

3. The Wife argues that the trial court erred by finding, without evidence, that a portion of the Husband's retirement accounts were pre-marital. We disagree.

“The equitable division of property is an allocation to the parties of the assets acquired during the marriage, based on the parties’ respective equitable interests.” *Flesch v. Flesch*, 301 Ga. 779, 779(1) (804 SE2d 67) (2017) (punctuation omitted). To equitably divide the parties’ marital property, the trial court must classify the disputed property as either marital or non-marital, as only marital property is subject to division. See *id.* at 780(1). “Marital property includes real property, personal property, and assets acquired as a direct result of the labor and investment of the parties during the marriage.” *Id.* Whether a specific item of property constitutes a marital or non-marital asset may be a question for the trier of fact to determine from the evidence. See *id.* Appellate courts review those findings of fact pursuant to the “any evidence” rule, “under which a finding by the trial court supported by any evidence must be upheld.” *Id.* (punctuation omitted). In evaluating the merit of the Wife’s claims, we afford the trial court substantial deference in classifying and dividing the property of the parties. See *id.*

Here, the Wife states that “[a]t trial, the only evidence [Husband] attempted to provide regarding a pre-marital component of his Fidelity retirement accounts was his expert witness testifying that he worked for two years prior to marriage at the company providing the 401k.” The Husband’s expert conceded that it was entirely possible that the “all contributions [to the Fidelity retirement account] were made

after the marriage occurred,” but also testified that “[h]e participated in the company 401(k). He worked at Amazon for a total of six years. He got married two years into that employment. We have record of the funds transferring from Amazon to Fidelity We do not have record of a marital -- what a balance was at the time of marriage. So when we don’t have complete records, we make assumptions, and our assumption was since one-third -- since they were married two years into a six-year employment, we considered one-third premarital and two-thirds marital.” Thus, the Wife’s statement that the trial court relied upon no evidence is incorrect. The Husband’s expert witness testified that while there were not complete records of these accounts, he made certain assumptions about how much was contributed prior to the marriage and after the parties married, and the trial court was permitted to rely on the expert witness’s testimony. See *Miller v. Miller*, 288 Ga. 274, 275(1) (705 SE2d 839) (2010) (“The facts upon which an expert bases his or her opinion are admissible on either direct or cross-examination, and such bases go to the weight given the testimony by the factfinder, rather than to its admissibility.” (punctuation omitted)).

4. The Wife next argues that the trial court erred when it failed to consider the Husband’s 529 plans, opened after the filing of the divorce and with marital funds, as marital property. We agree.

In the marital balance sheet attached to the divorce decree, numerous assets are listed as part of the marital estate, including cash, retirement accounts, vehicles, and real estate. Under “assets not included” in the “total marital estate,” are three college savings plans, one being a 529 plan and two being Uniform Transfer to Minors Act (“UTMA”) accounts. These plans are in the names of the Husband (529 account), the parties’ minor child D. B. (UTMA account), and the Husband’s son from another relationship (UTMA account).

The Husband’s expert witness testified that the Husband used marital funds to fund the three plans. We agree with the Wife that the trial court should have included the amount of any true 529 plan in the total amount of the marital estate. We also agree that by not including the amount of any 529 plan in the marital estate, the trial court’s order incorrectly stated that it awarded 30 percent of the estate to the Wife and 70 percent of the estate to the Husband.

But both the special master and the Husband’s expert referred to the UTMA accounts as 529 plans. Georgia’s version of the UTMA, the Georgia Transfers to Minors Act (“GTMA”), is codified at OCGA § 44-5-110 et seq. Accounts under the GTMA are custodial property, irrevocably belonging to minor beneficiaries and not the separate property of the Husband, which fall outside the marital estate. OCGA § 44-5-121(b). The GTMA sets forth the manner of creating custodial property, the

powers and duties of the custodian, and procedures for the removal of a custodian. OCGA §§ 44-5-119, 44-5-122, 44-5-123, 44-5-128. The GTMA also sets forth that “[a] custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian’s duties.” OCGA § 44-5-125.

Consequently, we vacate the portion of the divorce decree listing the Husband’s 529 plan and the UTMAs as nonmarital assets. The trial court is directed to make factual findings about whether the accounts for D. B. and the Husband’s son from another relationship are 529 plans or accounts under the GTMA. The trial court is also directed to make factual findings about which party is the custodian of any GTMA account. Finally, we further direct the trial court to re-calculate the marital estate subject to equitable division by including in the estate the amount paid by the Husband into any 529 plan and GTMA account with marital property and make a new ruling on the equitable division of the re-calculated marital estate. See *Boomer v. Boomer*, 367 Ga. App. 280, 284(2) (885 SE2d 300) (2023); *Payson v. Payson*, 274 Ga. 231, 233(1)(b) (552 SE2d 839) (2001) (an appellate court’s “invalidation of a portion of the factfinder’s allocation of marital property works a change in matter of substance regarding the allocation of marital property and requires the factfinder to re-examine its equitable division of marital property” and “even if the error is limited to one item of property, the factfinder’s allocation of economic resources must be

determined de novo” because “a party’s non-marital property is a factor that may be considered in assessing the equities of the division of marital property” (citation modified)).

5. The Wife next argues that the trial court erred in awarding the Husband seventy percent of the marital estate through flawed reasoning. Although on remand, the trial court’s percentage division of the marital property may change, it cannot be said that the trial court failed to divide the marital assets equitably simply because it awarded 70 percent of the marital estate to the Husband and 30 percent to the Wife.

An equitable division of marital property does not necessarily mean an equal division. The purpose behind the doctrine of equitable division of marital property is to assure that property accumulated during the marriage be fairly distributed between the parties. Each spouse is entitled to an allocation of the marital property based upon his or her respective equitable interest therein. Thus, an award is not erroneous simply because one party receives a seemingly greater share of the marital property.

Waters v. Waters, 280 Ga. 477, 478(2) (629 SE2d 233) (2006) (citations omitted). “In any event, it would appear that, on balance, the trial court’s division achieved a rough parity.” *Id.* at 479(2). For example, although the Wife was awarded \$196,951.62 out of the \$656,505.43 marital estate, the trial court made the Husband responsible for paying the entirety of the marital tax debt of \$47,172 for the 2021 tax year; \$52,765

for the 2022 tax year; \$106,073 for the 2023 tax year; and an estimated \$93,406 for the 2024 tax year. Thus, we reject the Wife's argument that the trial court's equitable division of the marital estate was flawed merely because the percentage division of the marital estate appears unequal. See *Waters*, 280 Ga. at 478(2).

And, again, while the trial court's percentage division of marital property may change upon remand, we also reject the Wife's argument that the trial court erred in its reasoning when dividing the marital estate. The trial court's order noted that it considered: (1) the duration of the marriage, (2) the parties' conduct, (3) the health, age, occupation, vocational skills, and employment of each party, (4) the opportunity for future acquisition of assets and income by employment or otherwise, (5) the amount and source of income, (6) the estate, debt liability, and other needs of each party, and (7) each party's contribution to the acquisition and maintenance of marital property. The Wife complains that the trial court erred by finding that because she is nine years younger than the Husband that she has a better opportunity to acquire future assets and income by employment, that she did not provide testimony regarding her contributions to the marital unit, and by failing to account for the amount of money that the Husband spent while traveling. We disagree. The trial court's order noted that the Wife had "started several businesses and is somewhat of an entrepreneur," that she worked throughout the marriage, that the Husband

withdrew money from his retirement accounts to support the Wife while she pursued her various career paths, and that although the Wife was “primarily a stay-at-home mom, she wanted to work, and the Petitioner supported her efforts.” And the trial court’s order expressly considered the Husband’s travel, in addition to other circumstances including the Husband’s support for the Wife and her child from a prior relationship. Thus, the Wife has not shown that the trial court abused its discretion in its consideration of these issues in equitably dividing the parties’ marital estate. *Zekser v. Zekser*, 293 Ga. 366, 367(1) (744 SE2d 698) (2013) (when equitably dividing property, the trial court should consider all of the relevant circumstances).

6. The Wife next argues that the trial court erred when it made her responsible for paying a \$40,750.32 lien placed on the marital residence by her former attorney because it deprived the Wife of her opportunity to challenge the lien. We disagree.

Pursuant to OCGA § 15-19-14(b), ... the lien was valid. The statute provides that “upon actions, judgments, and decrees for money, attorneys at law shall have a lien superior to all liens except tax liens; and no person shall be at liberty to satisfy such an action, judgment, or decree until the lien or claim of the attorney for his fees is fully satisfied.” Furthermore, “the lien arises upon the institution of the suit; it is fixed as soon as the suit is filed and may not be divested by any settlement or contract, it matters not by whom the settlement may have been made or attempted. After suit has been filed it can not be settled so as to defeat the lien of the attorney for his fees.

Ruth v. Herrmann, 291 Ga. App. 399, 401–02(2) (662 SE2d 726) (2008). At the time of the trial court’s entry of the divorce decree, the attorney’s lien on the Husband’s property in which the Wife claimed an interest had been filed and the Wife had received notice thereof. Therefore, we concur in the trial court’s implicit ruling that the lien was valid. *Id.*

Judgment affirmed in part, reversed in part, and case remanded. McFadden, P. J., and Watkins, J., concur.