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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-4130-19
A-0916-20

K. ANTHONY THOMAS,

Plaintiff-Appellant,

v.

NATASHA THOMAS,

Defendant-Respondent.

Argued February 9, 2022 – Decided May 16, 2022

Before Judges Gilson, Gooden Brown, and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FM-07-2049-18.

Marisa Lepore Hovanec argued the cause for appellant (Gomperts Penza McDermott & Von Ellen, LLC, attorneys; Marisa Lepore Hovanec, of counsel and on the briefs).

Gregg D. Trautmann argued the cause for respondent (Trautmann & Associates, LLC, attorneys; Gregg D. Trautmann, on the brief).

PER CURIAM

After fifteen years of marriage, the parties filed for divorce. They were able to work out an agreement concerning custody of their two children and some of the issues related to supporting the children. The remaining issues, principally involving alimony and equitable distribution, were addressed at a three-day trial. Based on the evidence at trial, Judge Annette Scoca, J.S.C., issued a seventy-two-page written opinion in which she made detailed findings of fact and conclusions of law. Judge Scoca also issued a final judgment of divorce (JOD) that resolved all issues of alimony, equitable distribution, and child support.

Plaintiff, the former husband, appeals from the JOD and two post-judgment orders entered on June 10, 2020, and November 20, 2020. He raises numerous arguments, contending that Judge Scoca erred in making rulings on alimony, student-loan debts, credit-card debts, distribution of rental income, and attorneys' fees. He also complains that Judge Scoca erred in denying his motion for reconsideration and in finding that he was in violation of defendant's litigant rights.

Having reviewed the record, we reject all of plaintiff's arguments with one relatively minor exception. We affirm the JOD and the June 10, 2020 order substantially for the reasons set forth in Judge Scoca's comprehensive written

opinions. We also affirm the November 20, 2020 order, with one exception. The exception concerns the date for the calculation of a child support credit owed to plaintiff. We remand that one issue and direct that the credit set forth in paragraph ten of the November 20, 2020 order be adjusted. In accordance with the parties' written agreement, plaintiff's obligation to pay child support was suspended on September 3, 2019. Accordingly, on remand, plaintiff will be given an adjusted credit.

I.

The parties were married in August 2002. They have two children: a daughter born in 2004, and a son born in 2006. In September 2017, the parties separated, and defendant left the marital home.

Shortly thereafter, defendant initiated an action to address custody and child support. On January 24, 2018, the family court, under a non-dissolution docket, entered an order providing that the parties were to share joint legal and physical custody of their children and plaintiff was to pay defendant \$165 per week in child support.

During the marriage, both parties financially contributed to the support of the household. Plaintiff is an assistant federal public defender and an adjunct professor at a law school. At the time of the divorce, he earned approximately

\$176,000 annually from those positions. Defendant is a public-school teacher, and at the time of the divorce her annual salary was approximately \$105,000.

During the marriage, the parties acquired a marital home and an investment property from which they received rental income. The parties also accumulated various debts. When they were married, plaintiff owed approximately \$102,000 in loans he had incurred from attending law school; those loans were largely paid off during the marriage. In the later years of their marriage, defendant began to pursue a doctorate in education, and, at the time of the divorce, she owed just over \$70,000 in student loans. The parties also had credit cards that had an accumulated debt of \$13,350.

In February 2019, the parties' investment property was sold, but they made no money on the sale because of delinquencies on the mortgage and property taxes. In addition, at the time of their divorce, the parties were subject to federal and state income tax liens.

Following a year of litigation, the parties were able to resolve some issues but could not resolve equitable distribution or alimony. Accordingly, a three-day trial was conducted in June and July 2019. The parties were the only witnesses who testified at trial, and plaintiff represented himself while defendant was represented by counsel.

On September 3, 2019, after the close of evidence but before the JOD was issued, the parties signed a document agreeing to suspend plaintiff's child support obligations pending a final decision by the court. The agreement stated that it would become "enforceable upon the signature of the Parties." Thereafter, that agreement was submitted to the court and, on November 12, 2019, the court entered an order incorporating its terms.

On February 4, 2020, Judge Scoca entered the JOD and issued a comprehensive written opinion setting forth her findings of fact and conclusions of law. In the JOD, the judge directed, among other things, that (1) plaintiff was to pay defendant limited durational alimony for twelve years in the amount of \$1,250 per month (that is, \$15,000 annually); (2) the parties were to list the marital home for sale and when it was sold they were to evenly share the net proceeds; (3) plaintiff was to pay half of the credit card debt of \$13,350, with his share being \$6,675; (4) plaintiff was to pay defendant half of her remaining student loan debt of \$70,150, with his share being \$35,075; (5) plaintiff was to pay defendant half of the rents he had collected in 2017 and 2018 from the parties' investment property; (6) the parties' custody and child support agreement was to remain in effect, the parties were to contribute half of the cost of health insurance for the children, which was deducted from defendant's salary, and defendant would pay plaintiff \$26 per week in child support; (7) both

parties were directed to obtain and maintain life insurance securing their financial obligations; and (8) plaintiff was to reimburse defendant for the attorneys' fees and costs she had incurred at trial.

Judge Scoca rejected plaintiff's contention that he had taken two loans on the marital home. The judge found that plaintiff had not submitted evidence establishing the existence of those loans and, therefore, the judge denied plaintiff's request to make defendant responsible for repaying half of the alleged loans.

The factual findings supporting the rulings in the JOD were set forth in Judge Scoca's written opinion. The law, and an analysis of the law applied to the facts, were also detailed in the judge's written opinion.

Shortly after the JOD was issued, plaintiff moved for reconsideration and to stay his obligations to make payments as directed in the JOD. Defendant opposed that motion and cross-moved to enforce her rights under the JOD. On June 10, 2020, the court heard oral argument on those motions and issued an order denying plaintiff's request for reconsideration and a stay and granting defendant's cross-motion. In that order, the court directed plaintiff to pay \$11,250 for defendant's trial costs and attorneys' fees and explained the reasons for those awards in a written statement of reasons. In July 2020, plaintiff filed a notice appealing from the JOD and the June 10, 2020 order.

Approximately two months later, defendant filed a second motion to enforce her litigant's rights. Plaintiff cross-moved to receive credits for payments on the mortgage of the marital home and overpayments of child support. Concerning child support, plaintiff claimed that his wages had continued to be garnished after September 3, 2019, when the parties had agreed that his child support obligations would be suspended. He asserted that he was owed a credit of \$8,880 for overpaid child support.

On October 16, 2020, the court heard oral argument on those post-judgment motions. At those proceedings, the parties agreed that defendant would pay plaintiff \$2,500 for her share of the marital tax debt. The parties also agreed that plaintiff had overpaid child support, but they disagreed as to the date when his support should have ended. The court determined to give plaintiff a credit effective November 12, 2019, reasoning that was the day the court had entered its order recognizing the parties' September 3, 2019 agreement. On November 20, 2020, the court entered an order memorializing its rulings and the parties' agreements. In relevant part, plaintiff was given a credit of \$15,105.76.

Plaintiff filed a second notice of appeal from the November 20, 2020 order. Thereafter, we consolidated the appeals. We now address the issues raised on both appeals in this consolidated opinion.

II.

Plaintiff raises nineteen issues in his appeals. Many of the issues, however, are repetitive because plaintiff challenges the same rulings in both the JOD and the denial of his motion for reconsideration. In summary, plaintiff contends that Judge Scoca erred in her rulings on (1) alimony; (2) his responsibility for student loans incurred by defendant in seeking her doctorate; (3) his responsibility for credit-card debt; (4) his obligation to pay defendant half of the rents received from their investment property; (5) the rejection of his contention that defendant should be responsible for bank loans he claims he took out during the marriage; and (6) the award of fees and costs to defendant. Having reviewed all these contentions, we discern no reversible error, except for the date for suspending plaintiff's child support obligation; we remand that one issue for a new calculation of that part of the credit owed to plaintiff.

A. Standard of Review.

Appellate review of a decision following a trial is limited. Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015). We defer to a trial judge's fact findings "when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222 N.J. 414, 428 (2015) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)); Elrom, 439 N.J. Super. at 433. "In matrimonial matters, this '[d]eference is especially appropriate when the evidence is largely testimonial

and involves questions of credibility.'" Elrom, 439 N.J. Super. at 433 (alteration in original) (quoting Cesare, 154 N.J. at 412). "[L]egal conclusions, and the application of those conclusions to the facts, are subject to our plenary review." Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013).

Having analyzed each of plaintiff's contentions, we affirm the JOD and the June 10, 2020 order substantially for the reasons set forth in Judge Scoca's written opinions. In those opinions, the judge made detailed factual findings and all those findings are supported by substantial, credible evidence. The judge also correctly summarized the well-established law governing alimony and equitable distribution, and we discern no basis to disagree with her application of the law to the facts she found.

B. Plaintiff's Arguments.

Although most of plaintiff's arguments are aptly refuted by the analysis set forth in Judge Scoca's written opinions, we briefly analyze the main arguments raised by plaintiff on his appeals.

1. Alimony.

Plaintiff contends that Judge Scoca made several errors in awarding defendant alimony. He argues that the judge failed to make numerical findings on the marital lifestyle, failed to impute additional income to defendant, and

erroneously included a \$2,410 monthly debt service expense in the calculation of defendant's lifestyle. None of these arguments are supported by the record.

Alimony is designed to allow a spouse who has been supported during the marriage to, as best as possible, maintain the marital standard of living. Quinn v. Quinn, 225 N.J. 34, 48 (2016) (citing Innes v. Innes, 117 N.J. 496, 503 (1990)). Family courts have substantial discretion in determining the type and amount of alimony. Jacobitti v. Jacobitti, 135 N.J. 571, 575 (1994). Nevertheless, courts must consider thirteen factors identified by the Legislature in N.J.S.A. 2A:34-23(b), as well as any other factor which the court may deem relevant. The Legislature has also required courts to "make specific findings on the evidence about all of the . . . factors set forth in [the statute]." N.J.S.A. 2A:34-23(c). We review an award of alimony for an abuse of discretion. Genovese v. Genovese, 392 N.J. Super. 215, 222-23 (App. Div. 2007).

Judge Scoca engaged in a factor-by-factor analysis and made specific factual findings supporting her alimony determinations. Among those findings, the judge found that the parties' "yearly expenses rang[ed] from a low of \$138,317.52 [to] a high of \$145,650.24." Accordingly, the judge made the required numerical findings concerning the marital lifestyle. See S.W. v. G.M., 462 N.J. Super. 522, 532 (App. Div. 2020).

Judge Scoca also appropriately rejected plaintiff's arguments that additional income should be imputed to defendant. The judge found that plaintiff had provided no support for that contention and there was no evidence showing that defendant was under-employed. An individual is under-employed when he or she "is intentionally failing to earn that which he or she is capable of earning." Gormley v. Gormley, 462 N.J. Super. 433, 448 (App. Div. 2019) (quoting Dorfman v. Dorfman, 315 N.J. Super. 511, 516 (App. Div. 1998)). The evidence at trial established that defendant was employed as a public-school teacher, and we discern no abuse of discretion in Judge Scoca's decision not to impute income that defendant might have been able to earn during the summer.

Plaintiff's arguments about the monthly debt service expense are based on a misreading of the record. At trial, defendant expressed some confusion concerning the monthly debt service listed in Schedule C of her case information statement (CIS). Nevertheless, the court reviewed Schedule C to defendant's CIS and determined that the debt service represented payments for the credit cards that were listed in a separate portion of the CIS. Consequently, the judge's findings concerning the monthly debt expense are supported by the record.

2. Equitable Distribution.

Plaintiff makes a series of arguments concerning items that are part of equitable distribution. He challenges Judge Scoca's rulings on defendant's

student debt, credit-card debt, the distribution of rents from the investment property, alleged loans, and tax liabilities.

"A family part judge has broad discretion . . . in allocating assets [and liabilities] subject to equitable distribution." Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012). In doing so, the court is tasked with dividing property acquired during the marriage in a manner that is just and fair under the circumstances. Steneken v. Steneken, 183 N.J. 290, 299 (2005); see also Genovese, 392 N.J. Super. at 225-26 (outlining steps family courts must take in making an equitable distribution award); N.J.S.A. 2A:34-23.1 (listing non-exclusive factors to consider in making equitable distribution). "[A]n equitable distribution does not presume an equal distribution." M.G. v. S.M., 457 N.J. Super. 286, 295 (App. Div. 2018). We review equitable distribution awards for an abuse of discretion or "fail[ure] to consider all of the controlling legal principles." Gonzalez-Posse v. Ricciardulli, 410 N.J. Super. 340, 354 (App. Div. 2009).

Judge Scoca conducted a factor-by-factor analysis, evaluated the parties' circumstances, and considered the evidence submitted at trial. Although plaintiff challenges Judge Scoca's factual findings, he cites no material facts or governing law overlooked by the judge. In challenging his obligation to pay half of defendant's loans incurred in her doctoral studies, he argues that her

studies did not provide an economic benefit to the marriage. See Lozner v. Lozner, 388 N.J. Super. 471 (App. Div. 2006). Judge Scoca found that defendant's continued education allowed her to receive higher earnings as a teacher and that her doctoral studies were a continuation of that ongoing education. The judge also exercised her discretion in recognizing that it was equitable to share defendant's student debt because the parties had paid off more than \$100,000 in loans incurred by plaintiff while he was in law school.

The judge also made specific findings concerning the credit-card debt and plaintiff's obligation to share half the rents he had collected in 2017 and 2018 on the investment property. Those factual findings rebut plaintiff's arguments on appeal. In rejecting plaintiff's arguments concerning alleged loans he had taken out on the home, Judge Scoca expressly found that there was no evidence supporting the existence of such loans. Plaintiff points to no evidence overlooked by the judge, and we discern no reversible error. See Slutsky v. Slutsky, 451 N.J. Super. 332, 348 (App. Div. 2017) (explaining the party asserting a marital debt must prove its existence).

Plaintiff also contends that Judge Scoca erred in failing to include a determination of his request that defendant share in the joint tax liability incurred during the marriage. That issue is now moot because the parties resolved the tax liability issue and plaintiff received a credit as reimbursement

for defendant's share of the tax debt. See N.J. Div. of Youth & Fam. Servs. v. A.P., 408 N.J. Super. 252, 261 (App. Div. 2009) (describing an issue as moot where a court's decision can have no practical effect on the existing controversy).

3. Attorneys' Fees and Costs.

Rule 5:3-5(c) sets forth nine factors courts must consider when awarding attorneys' fees in a family matter. In addition to those factors, courts can also consider a party's "[b]ad faith and assertion of an unreasonable position." Diehl v. Diehl, 389 N.J. Super. 443, 455 (App. Div. 2006); N.J.S.A. 2A:34-23. We will disturb a counsel fee award "only on the 'rarest occasion,' and then only because of [a] clear abuse of discretion." Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (citing Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). Here, we discern no abuse of discretion.

Judge Scoca appropriately considered the standards set forth in N.J.S.A. 2A:34-23 and Rule 5:3-5(c) in making an award of counsel fees and in evaluating defendant's fee application. The judge set forth her evaluations in her written opinions issued on February 4, 2020 and June 10, 2020. The judge granted defendant's request for fees, in part, because of plaintiff's "unreasonable position regarding alimony." The judge explained that plaintiff "was aware of the factors the court considers in awarding alimony" because he addressed them.

Nevertheless, the judge found plaintiff's position to be unreasonable. Ultimately, Judge Scoca awarded defendant \$11,250 for counsel fees. That award was not unreasonable, and we discern no abuse of discretion.

4. The Credit for Overpaid Child Support.

In his post-judgment motions, plaintiff sought a credit because he had overpaid child support. Under the parties' September 3, 2019 agreement, plaintiff's child support payments were supposed to be suspended, but his wages continued to be garnished for child support. Defendant conceded that plaintiff was entitled to a credit. The only issue in dispute was the date from which to calculate the credit. Plaintiff contended that he should be given a credit from September 3, 2019, when the parties signed their agreement. Defendant argued the credit should be run from November 12, 2019, the date when the judge entered an order incorporating the September 3, 2019 agreement. Judge Scoca ultimately agreed with defendant.

We hold that that ruling was an error. The September 3, 2019 agreement expressly states that it was to become effective when signed by the parties. The November 12, 2019 order incorporating that agreement did not modify the agreed on effective date. Accordingly, we remand this one issue with the direction that plaintiff's credit is to be adjusted so that he will be given a credit for any overpayment of child support after September 3, 2019. The family court

can adjust the credit set forth in paragraph ten of the November 20, 2020 order accordingly.

C. Summary.

In summary, we affirm the JOD and the June 10, 2020 order. To the extent that we have not addressed all the issues raised by plaintiff, we find that those arguments lack sufficient merit to warrant a discussion in a written opinion. See R. 2:11-3(e)(1)(E). We also affirm the November 20, 2020 order except for paragraph ten, which is remanded for an adjustment of the credit given to plaintiff.

Affirmed in part and remanded in part. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION