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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0765-21**

**GLORIA SACCENTE,
f/k/a GLORIA GRANQUIST,**

Plaintiff-Appellant,

v.

KEITH GRANQUIST,

Defendant-Respondent.

Submitted November 14, 2022 — Decided November 30, 2022

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex County,
Docket No. FM-12-2556-16.

Hendricks & Hendricks, attorneys for appellant
(Patricia M. Love, on the briefs).

Law Office of Steven P. Monaghan, LLC, attorney for
respondent (Kristin S. Pallonetti, on the brief).

PER CURIAM

Plaintiff Gloria Saccente appeals from an October 25, 2021 order granting defendant Keith Granquist's motion to terminate alimony. We reverse and remand for further proceedings consistent with this opinion.

The parties were married for nearly eighteen years when they signed a property settlement agreement (PSA) and subsequently divorced. The PSA's alimony provision required defendant pay plaintiff nine years of limited duration alimony in the amount of \$500 per week and, upon his retirement as a bus driver for the New York City Transit Authority, alimony would reduce to \$1,600 per month. The PSA noted plaintiff could not apply to modify alimony if defendant took on additional employment while working the transit authority or when he retired. Further, "[i]n computing alimony, [defendant]'s . . . gross income [for the tax year preceding the PSA] was \$108,087.90 and [plaintiff]'s . . . was \$21,869.00."

The PSA stated alimony would terminate if either party died, or plaintiff remarried or cohabited. Plaintiff agreed to waive alimony "[f]ollowing the completed payments" by defendant. And "[t]he parties agree[d] that neither party can maintain their exact marital lifestyle." Plaintiff was fifty-two and defendant fifty-four years of age when they divorced.

The parties agreed to sell the former marital residence and divide the proceeds equally, and likewise divided the marital coverture portion of defendant's pension and 457 retirement benefit plan. The PSA acknowledged plaintiff's pension from the Old Bridge Board of Education was "nominal" and defendant waived any claim to it.

Approximately four years after entering the PSA, defendant filed a motion to terminate alimony. He certified that driving a city bus significantly damaged his neck because "[t]he constant bouncing of [his] body herniated various discs in [his] neck." He described a 2013 neck surgery and a 2011 lung operation, which he claimed contributed to his desire to retire at the age of sixty-three, which was the limited duration alimony end date. However, after retiring from the transit authority effective January 2019, he subsequently secured a job with a plumbing company. He claimed the onset of COVID-19 put him out of work because his "health was severely compromised due to [his] limited lung capacity, . . . high blood pressure[, and] . . . neck and arm pain."

The Social Security Administration (SSA) declared defendant disabled effective March 1, 2020, and he began receiving \$2,885 per month in benefits beginning August 2020. Defendant certified his only other income was the \$1,463.97 per month payment from his pension after alimony was garnished

from it. He claimed plaintiff was receiving a "windfall" in the form of a monthly payment of \$556.57, representing her share of the pension as well as alimony payments totaling \$2,166.67. Defendant provided the court with an updated case information statement (CIS) showing monthly expenses of \$5,183, and argued he had a \$834.03 per month shortfall, which he met with credit cards and distributions from the 457 retirement benefit plan.

Plaintiff's certification in opposition to the motion argued alimony could not be terminated because the PSA contemplated defendant's retirement and contained an alimony step-down provision to avoid "the expense and aggravation of" returning to court. She certified the nine-year alimony duration "was a concession to allow for . . . [d]efendant to have an end to the alimony at an age that he desired, which was younger than a court would reasonably permit someone to retire[.]" and the agreement already contained alimony termination provisions, none of which were on account of retirement.

Plaintiff certified defendant was collecting more income by working for the plumbing company and receiving disability. She noted defendant was not in a dire financial situation because the 457 retirement benefit plan contained over \$120,000 and "he kept the lion's share," and his tax returns showed gambling losses of \$12,000. She noted his updated CIS showed a budget greater than the

marital lifestyle indicated on his CIS at the time of the divorce, which was \$4,797 per month.

In his moving certification, defendant also noted plaintiff received an inheritance from her father's estate. In her opposition, she claimed the inheritance was irrelevant to alimony. Defendant's reply certification provided the court with sale records of the father's residence, as well as purchase records of a home in plaintiff's name, and surmised plaintiff received \$182,500 representing her half of the inheritance from her father and used it to purchase a home mortgage free for \$154,000. Defendant also alleged plaintiff's income must have increased in the five years since the divorce. He requested the court order plaintiff to file an updated CIS.

At oral argument, the motion judge stated: "I believe [there] to be at least a prima facie showing by the . . . defense . . . [of a change in circumstances] that being . . . plaintiff's actual need, as impacted by the raising of the inheritance issue" The judge ordered plaintiff to file an updated CIS to determine whether there should be discovery, economic mediation, and a plenary hearing.

Plaintiff filed the updated CIS, which showed her earned income increased slightly to \$23,345 per year. Her budget was approximately \$6,420 per month, the most expensive line item being \$2,623 per month in debt service comprised

of post-judgment federal and state tax liabilities, credit cards debt, and a bank loan.

The motion judge issued a written decision finding defendant's current income totaled \$4,348.97 per month, comprised of \$2,885 per month in disability payments and \$1,463.97 in pension income. She found defendant's current budget of \$5,183 was only slightly greater than the \$4,797 marital budget and "not so significant as to suggest a higher standard of living."

The judge concluded plaintiff failed to meet her burden to rebut the presumption defendant was disabled by virtue of the SSA disability determination. She stated defendant's

inability to gain earned income to supplement his finances is a change in circumstances[,] which clearly impacts his ability to pay alimony. Further[,] the only available income to consider for payment of alimony would be \$2,285 per month from [d]efendant's [disability] payment as his pension income was distributed to both parties as equitable distribution. The court believes this to be inadequate to allow [d]efendant to support his reasonable CIS, schedule "ABC" expenses. For all these reasons[,] the court finds that [d]efendant has established a change in circumstances that has substantially impaired his ability to support himself and negatively impacting his ability to pay alimony, thereby warranting a termination of his alimony obligation to . . . [p]laintiff.

The judge made the following findings regarding plaintiff's cross-motion for counsel fees:

Plaintiff's argument that . . . the . . . PSA serves to insulate her alimony award from modification or termination is unsupported in fact or law. . . . Plaintiff was unsuccessful in her opposition and has not demonstrated that [d]efendant is in a superior financial position nor that she is unable to pay her own attorney fees.

On appeal, plaintiff argues the motion judge erred because she ignored the PSA's retirement provisions and focused on defendant's disability. She alleges defendant's receipt of disability improved his income, was not a change in circumstances warranting a termination of alimony, and the judge shifted the burden to her to prove defendant had not met the second prong of Lepis v. Lepis¹ without discovery. Plaintiff argues discovery and a plenary hearing are necessary because it will show defendant can afford to pay alimony. She asserts the judge erred in imputing income to her from the inheritance because it was not income-producing.

We typically "accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare v. Cesare, 154 N.J. 394,

¹ 83 N.J. 139 (1980).

412 (1998)). "However, a 'judge's legal conclusions, and the application of those conclusions to the facts, are subject to [our] plenary review.'" Gormley v. Gormley, 462 N.J. Super. 433, 443 (App. Div. 2019) (quoting Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015)).

Alimony is an "economic right that arises out of the marital relationship and provides the dependent spouse with 'a level of support and standard of living generally commensurate with the quality of economic life that existed during the marriage.'" Mani v. Mani, 183 N.J. 70, 80 (2005) (quoting Stiffler v. Stiffler, 304 N.J. Super. 96, 99 (Ch. Div. 1997)) "The basic purpose of alimony is the continuation of the standard of living enjoyed by the parties prior to their separation." [Innes v. Innes, 117 N.J. 496, 503 (1990)] (citing Mahoney v. Mahoney, 91 N.J. 488, 501-02 (1982)).

[Quinn v. Quinn, 225 N.J. 34, 48 (2016).]

In Gormley, we held

when the SSA has determined that a party is disabled, a presumption of disability is established. [Golian v. Golian, 344 N.J. Super. 337, 341-42 (App. Div. 2001).] When a party has been adjudicated disabled by the SSA, that determination "constitutes a prima facie showing that [a party] is disabled, and therefore unable to be gainfully employed, and the burden shifts to [the opposing party] to refute that presumption." Id. at 342-43. . . .

The evidence a party could present to rebut the presumption of disability could include "lay testimony, expert testimony[,] or medical records, consistent with the Rules of Evidence, as the trial court deems

appropriate." [Id.] at 343. If the opposing party can rebut the presumption of disability, the trial court may then impute income to the party receiving disability benefits. Id. at 341-43.

[462 N.J. Super. at 444-45 (second and fourth alterations in original).]

At the outset, we reject plaintiff's assertion the PSA restricted the grounds on which alimony could be terminated. Although the PSA recited specific terms for the termination of alimony and contemplated the payment of alimony even in defendant's retirement, we discern no intent to bar a modification or termination based upon a disability. Indeed, the facts in the record show defendant was suffering from various medical conditions during the marriage, although he was not yet disabled. However, the SSA's disability declaration is objective evidence of a prima facie change in circumstances. See id. at 444. In this respect, the motion judge's findings were sound.

However, the judge erred when she decided the matter without affording plaintiff discovery or a plenary hearing, and summarily terminating alimony without considering plaintiff's ability to meet her needs pursuant to the marital lifestyle and analyzing the alimony statutory factors, N.J.S.A. 2A:34-23. Although a hearing is not required in every disputed case, Murphy v. Murphy, 313 N.J. Super. 575, 580 (App. Div. 1998), one is required where there is a

dispute in material fact, Lepis, 83 N.J. at 159. A material factual dispute "bear[s] directly on the legal conclusions required to be made and [such] disputes can only be resolved through a plenary hearing." Spangenberg, 442 N.J. Super. at 540.

Discovery and a hearing were necessary here because the parties disputed defendant's ability to earn an income. Given that defendant's medical conditions existed during the marriage and defendant continued to work even after retiring from the transit authority, plaintiff was entitled to rebut the assertion he could earn no income by having discovery. Furthermore, a hearing is necessary to test these disputed facts as well as plaintiff's assertion regarding defendant's needs and spending, including the gambling. Defendant's current CIS showed he spent more by himself than the parties did together during the marriage without including the alimony obligation.

Likewise, discovery and a hearing were necessary before the judge could conclude plaintiff's inheritance constituted a change of circumstances to a degree that the bargained-for alimony obligation should terminate scarcely four years into the nine-year term. Although the parties stipulated they could not meet the marital lifestyle, the motion judge's findings contain no analysis of

plaintiff's needs or the marital lifestyle and why the termination of alimony satisfied either consideration.

For these reasons, we remand the matter for discovery and a plenary hearing. Because we have reversed the decision to terminate alimony, we also reverse the counsel fee determination, which shall abide the outcome of the plenary hearing.²

Reversed and remanded. We do not retain jurisdiction.

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



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² Although it was not raised on the appeal, we note the counsel fee determination also lacked the necessary findings and analysis under Rule 5:3-5(c). Should the judge adjudicate this issue again, she should articulate her findings by applying the facts to the law, including the Rule 5:3-5(c) factors.