SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1179-14T4
A-4222-14T4

KAREN LEVINE RUCKER,

Plaintiff-Appellant,

v.

BRIAN RUCKER,

Defendant-Respondent.

Submitted October 25, 2016 – Decided March 10, 2017

Before Judges Espinosa and Guadagno.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FM-03-1031-97.

Karen Levine Rucker, appellant pro se.

Forkin, McShane, Manos & Rotz, attorneys for respondent (J. Patrick McShane, III, on the brief).

PER CURIAM

In these consolidated matters, plaintiff Karen Levine Rucker appeals from three post-judgment matrimonial Family Part orders entered on August 15, 2014, October 31, 2014, and April

29, 2015. The parties have been before us on three prior occasions: Rucker v. Rucker, No. A-3597-99 (App. Div. Apr. 17, 2002) (Rucker I); Rucker v. Rucker, No. A-0389-03 (App. Div. Jan. 14, 2005) (Rucker II); and Rucker v. Rucker, No. A-3862-11 (App. Div. June 21, 2013), certif. denied, 216 N.J. 365 (2013) (Rucker III).

The parties married in 1984 and divorced in 1999. They have two children: Miriam, who was born in 1989, graduated from Rutgers University in 2012, and is emancipated; and Elana, who is now twenty-four, graduated from Rutgers University in 2015, is currently enrolled in a doctoral program at Rutgers University, and apparently unemancipated.

In Rucker I, plaintiff appealed from several portions of a judgment entered after the parties' ten-day divorce trial. Rucker I, supra, slip op. at 1. We rejected many of plaintiff's arguments, but remanded, as defendant's inheritance, which was excluded from the marital estate, was not considered in determining defendant's child support obligation. Id. at 1, 5-6, 19-23.

In Rucker II, we again reversed the motion judge's decision because of the failure to consider $412,000 in life insurance proceeds that defendant received as part of his inheritance. Rucker II, supra, slip op. at 8.

Following Rucker II, the parties entered into a consent order on March 7, 2005,[1] pursuant to which defendant agreed to pay plaintiff $50,000 to resolve all equitable distribution, child support, and counsel fee issues raised on appeal. Rucker III, supra, slip op. at 2. The order was a final resolution of the parties' financial issues, except for defendant's child support obligation. Ibid. The order also provided that defendant should provide $100,000 of life insurance with the children as beneficiaries with plaintiff as trustee. Ibid. The order did not address the children's college costs. Ibid.

In Rucker III, we reviewed plaintiff's December 2011 motion to compel defendant to pay college costs and medical expenses for the parties' children, and defendant's cross-motion to identify the expenses that qualified as college costs. Rucker III, supra, slip op. at 2, 4. As part of that appeal, we reviewed two trial court orders dated January 6, 2012, and February 24, 2012,[2] which determined that the parties would share the costs of college and medical expenses, with plaintiff paying forty-six percent and defendant paying fifty-four percent. Id.

[1] The order bears the incorrect date of March 7, 2004, when it was actually signed on March 7, 2005.

[2] Plaintiff provided the February 24, 2012 order in her appendix, but not the January 6, 2012 order. The February 24, 2012 order was subsequently amended by an order dated October 26, 2012.

at 3, 5. For college costs, the judge found there was "not a great disparity in the income and present assets of the parties for purposes of calculating child support (non-Guidelines) for college contribution," and determined that defendant's annual income was approximately $109,000, while plaintiff's yearly income was about $90,000. The judge required plaintiff to provide defendant with a summary of Elana's college expenses and required the child to apply for loans if either party was unable to pay for college. The judge denied plaintiff's request for a full accounting of defendant's inheritance, determining that the issue was resolved by the March 7, 2005 consent order.

We affirmed both the January 6, 2012 and February 24, 2012 orders, rejecting plaintiff's arguments that the judge should not have considered arguments raised in defendant's cross-motion and should have held an evidentiary hearing. Rucker III, supra, slip op. at 7.

On January 23, 2014, plaintiff filed a motion to compel defendant to pay his portion of $7051.16 in medical and college expenses, to provide proof of life insurance for the children, to seal the record, and to increase defendant's child support and percentage of responsibility for college and medical expenses due to changed circumstances, as plaintiff was recently diagnosed with cancer. The motion included hundreds of pages of

communications and receipts of medical and college expenses, but did not attach documentation verifying plaintiff's cancer diagnosis. Defendant filed a cross-motion in opposition and seeking to modify his college expense contribution and child support obligation.

After hearing oral argument, the judge entered an order on May 2, 2014, compelling defendant to pay his percentage of unreimbursed medical expenses and to provide proof of life insurance; plaintiff was ordered to provide an explanation of benefits and proof of payment for such expenses.

The judge determined that plaintiff did not present a sufficient factual or legal basis to consider whether the expenses for which she sought reimbursement qualified as college expenses, and granted defendant's cross-motion to limit his obligation for college expenses and child support. The judge denied plaintiff's requests to increase defendant's child support obligation and percentage of responsibility for college costs.

The judge found plaintiff failed to demonstrate changed circumstances, noting that her annual income remained at approximately $90,000, and that she failed to provide information relating to her medical condition until her reply to defendant's cross-motion. The judge granted plaintiff's request

to seal the record on the condition that she provide a list of exhibits entitled to protection.

The judge granted defendant's request to reduce life insurance coverage for the children, as Miriam was now emancipated and defendant was only required to maintain a $75,000 policy naming Elana as the beneficiary. Plaintiff did not appeal the May 2, 2014 order.

With the ink hardly dry on the May 2 order, plaintiff filed another motion on May 28, 2014, again seeking modification of defendant's child support obligation and percentage of responsibility for medical and college expenses. She provided additional details of her medical condition and proof that she had exhausted her sick leave at her place of employment.

While this motion was pending, plaintiff filed another motion on June 9, 2014, seeking enforcement of the May 2, 2014 order. On August 15, 2014, the motion judge heard oral argument and determined plaintiff had not made a prima facie showing of changed circumstances as the medical proofs she submitted did not establish an impact on her employment, or that her condition was permanent and would not change as a result of medical treatment. The judge granted defendant's request for counsel fees of $2500, finding plaintiff's motions were repetitive and

that her claim of changed circumstances contained the same allegations.

Plaintiff moved for reconsideration. On October 31, 2014, the judge heard arguments and denied plaintiff's motion, finding her overlength certification was repetitive of arguments provided in support of the May 28 and June 9 motions. The judge observed that plaintiff's self-represented status did "not entitle [her] . . . to repeated and ongoing violations of [c]ourt [r]ules and processes at the expense of the rights of the represented litigant." The judge granted defendant's request for counsel fees, but limited the award to $1500.

On November 6, 2014, plaintiff filed notice of appeal of the August 15, 2014 and October 31, 2014 orders. One month later she again moved for enforcement of the May 2, 2014 order. On February 20, 2015, the motion judge held a hearing and entered an order compelling defendant to pay unreimbursed college and medical expenses.

Settlement discussions ensued and on April 3, 2015, defendant sent plaintiff a check in the amount of $2740.86 to "resolve all past medical and college bills as of March 27, 2015." Plaintiff asked for $3202.56 and defendant, through his counsel, agreed. On April 17, 2015, defendant's counsel wrote a letter to plaintiff, enclosing a check for $3202.56, containing

the notation stating that it was "For Medical/College Settlement." Counsel explained the notation was "intended to express" that the "check represents settlement/resolution of [medical and college expense] issues."

On April 21, 2015, plaintiff wrote a letter to defendant's counsel rejecting the payment and returning the check because "there is a notation on the bottom." She claimed their "agreement stipulated that there be no notations on the check" and, as such, she was returning this check. That day, plaintiff wrote a letter to the judge, informing him that the matter was not resolved because she was "clear and unequivocal" that "there was to be no notation on the check." Defense counsel replied to the judge that defendant never agreed to provide a check without notation and he could not understand plaintiff's reason for rejecting the check.

The judge refused to become enmeshed in the squabble over the check's notation and on April 29, 2015, entered an order indicating defendant's payment constitutes a settlement and declared, "[a]s far as the [c]ourt is concerned, this matter is settled[.]" Defendant resubmitted his check for $3202.56 with the notation "For Medical/College Settlement." Plaintiff again rejected the check "because it has an annotation."

On appeal No. A-4222-14, plaintiff challenges the April 29, 2015 order and claims the judge misapplied the offer and acceptance rule, and should have held a plenary hearing to resolve which form of order submitted under the five-day rule was in accord with the parties' understandings.

We find plaintiff's argument that defendant breached the settlement agreement by providing a notated check is not only completely devoid of merit, but is patently frivolous warranting only the briefest of discussion. R. 2:11-3(e)(1)(E).

There is no evidence in the record that defendant agreed to provide an unnotated check in settlement of the dispute over undergraduate college expenses and unreimbursed health care bills as of March 27, 2015. Plaintiff did not establish or even claim the notation on the check was inaccurate. Therefore, her rejection of the two checks drawn in the agreed-upon amount and bearing unquestionably accurate notations was unreasonable.

On appeal No. A-1179-14, plaintiff claims she was improperly sanctioned; she should have been awarded an increase of child support; defendant should have been compelled to pay medical and college expenses as per the May 2, 2014 order; defendant should be compelled to abide by the terms of a March 2004 settlement agreement and reinforced by the May 2, 2014 order; defendant should have been sanctioned; the judge erred in

restraining plaintiff from having contact with defendant and from contacting the Postal Service, defendant's employer, or any other entity in an attempt to obtain defendant's home address; the judge erred in reserving defendant's claim for damages; the judge erred by restraining plaintiff from seeking a wage execution; and the judge erred by ordering plaintiff to mail plaintiff's and her daughter's information to a public place of business.

Plaintiff's notice of appeal indicates she is appealing from the October 31, 2014 order, which denied her motion for reconsideration of the August 15, 2014 order, which denied her motion to increase defendant's child support obligation and his contribution to college and medical bills. In his statement of reasons attached to the August 15, 2014 order, the judge noted that two weeks earlier he denied a similar motion because plaintiff had not made a prima facie showing of a substantial change of circumstances. The judge further found that plaintiff's subsequent submission did not provide "any sufficient further information on her medical condition, disability payments, or financial information for the [c]ourt to consider in order to determine that there has been a substantial change in circumstances since the last time support was calculated."

In the judge's statement of reasons attached to the October 31, 2014 order denying plaintiff's motion for reconsideration, he first rejected plaintiff's claim that she had been subjected to "disparate treatment because of her self-represented status" as lacking "any factual or legal basis." The judge then noted that because plaintiff's motion presented the same information that she provided in her previous submissions, she did not meet her burden for reconsideration.

The scope of our review is limited. "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). Moreover, we accord special deference to the family court because of its "special jurisdiction and expertise in family matters." Id. at 413. However, the "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Such deference "is especially appropriate when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997). "Accordingly, when a reviewing court concludes there is satisfactory evidentiary support for the trial court's findings,

'its task is complete and it should not disturb the result, even though it has the feeling it might have reached a different conclusion were it the trial tribunal.'" Llewelyn v. Shewchuk, 440 N.J. Super. 207, 213-14 (App. Div. 2015) (quoting Beck v. Beck, 86 N.J. 480, 496 (1981)).

Reconsideration should only be used "for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). Additionally, the decision to deny a motion for reconsideration falls within the sound discretion of the trial judge, to be exercised in the interest of justice. Ibid.

Applying this standard, our review of the submissions by plaintiff in support of the initial motion for modification and the motion for reconsideration confirm the judge's conclusion that both submissions present the same information and thus, the motion for reconsideration is meritless.

In awarding counsel fees and costs to defendant, the judge considered the factors in Rule 4:42-9. We note that the amount of the award is meager.

Affirmed.