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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2381-14T3

NASRIEN AWADALLAH,

Plaintiff-Respondent,

v.

BAHA AWADALLAH,

Defendant-Appellant.

Submitted January 24, 2017 – Decided February 16, 2017

Before Judges Koblitz and Summers.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FM-09-0620-14.

Baha Awadallah, appellant pro se.

Jeffrey M. Bloom, attorney for respondent.

PER CURIAM

Defendant Baha Awadallah appeals from an October 31, 2014 order denying his application to modify alimony and child support based on his failure to establish changed circumstances. The order also awarded his ex-wife, plaintiff Nasrien Awadallah, attorney fees.

Defendant argues that he established changed circumstances because he changed jobs and now earns substantially less than he did before. He also argues that New Jersey lacks jurisdiction over him because the couple lived in Wisconsin during their marriage. Defendant further argues that he did not voluntarily enter into the property settlement (PSA) with his ex-wife and therefore it is unenforceable. Defendant lastly argues that the motion judge erred in awarding plaintiff attorney fees. Because the motion judge did not abuse her discretion in any respect, we affirm.

The parties were married in New Jersey in 2000. They had two children and lived in Milwaukee, Wisconsin. Throughout the marriage, defendant worked as an assistant manager and was the sole provider for the family, while plaintiff was a stay-at-home mom. Defendant earned \$40,000 in 2013. In the spring of 2013, due to marital discord, plaintiff left Wisconsin with the couple's two children and relocated to her parent's home in New Jersey.

Plaintiff filed for divorce in August 2013, and in November 2013, plaintiff filed a pendente lite support application. Defendant filed an answer in December 2013, raising the affirmative defense that New Jersey lacked jurisdiction over him. He then filed a cross-motion to dismiss plaintiff's complaint for lack of personal and subject matter jurisdiction.

The parties, both represented by counsel, reached a divorce settlement and placed it on the record on March 7, 2014. They agreed that plaintiff would receive \$695 a month in alimony and that "child support would be calculated pursuant to New Jersey Child Support Guidelines with defendant having an income of \$32,800, that being his 2013 annual income of \$40,800 minus \$8,340 per year he had to make in alimony." The parties also stipulated that plaintiff had an annual income of \$23,340, consisting of an imputed income of \$15,000 and \$8,340 in alimony payments. Defendant voluntarily consented to the jurisdiction of New Jersey.

The parties prepared a detailed written PSA providing that New Jersey law would govern the execution of the agreement and that alimony would last for seven years beginning April 2014. The divorce was finalized on March 26, 2014.

In July 2014, after plaintiff filed a successful post-judgment motion seeking enforcement, an order was entered, finding defendant violated the PSA and ordering him to pay alimony and child support pursuant to the PSA as well as plaintiff's attorney's fees for the motion.

Two months later, defendant filed a motion to decrease child support, decrease alimony to "\$0" and change venue. Defendant claimed that his new job significantly reduced his income, making child support and alimony payments "impossible." Plaintiff filed

a cross-motion seeking enforcement of the PSA. As of the date of the cross-motion, defendant was \$1174 in arrears on child support. He had paid no alimony and was \$4,170 in arrears. Defendant's response to the cross-motion asked the court to void the PSA because it was not fair and equitable, and had been signed under duress. Because this extraordinary relief had not been included in his notice of motion, it was not considered by the motion judge.

Defendant argued that the basis of his application for the reduction of alimony and child support was that he had started a new job in June 2014 and earned only \$1,800 per month during the initial training period. Defendant also stated that he received only \$932 in September 2014. He said, "This month I'm actually doing a lot better because I sold nine cars. I mean, it's a big improvement . . . I'm actually in a job that I actually do love, and hopefully I'm getting better as times go [on]." Defendant further argued that he worked fifty to sixty hours a week while plaintiff only worked thirty hours a week and lived with her family rent-free.

The motion judge denied defendant's application to reduce alimony and child support, finding that because he had recently started his new job, his decrease in wages was temporary and the issue of modification premature. The judge stated in her oral opinion:

You've only been at the job since June 17th. According to the papers that you have provided me it was a three-month training period. We are now out of the three-month training period, and although last month you took home what you consider substantially less than what even our awards are . . . this month you say there's been a big improvement. . . . [I]n order for the Court to assess this, I would need to have a bit more definiteness.

The judge also stated that defendant's employment contract reflected that the \$1,800 monthly salary was the minimum income during his ninety-day training period, which had ended by the date of the hearing. The judge ultimately held that she was unable to "begin to reasonably define an income." The judge further determined that the disparity between the number of hours that the parties worked per week did not establish a change of circumstances because those same circumstances existed in March when the parties reached their divorce settlement.

"The modification of alimony is best left to the sound discretion of the trial court." Innes v. Innes, 117 N.J. 496, 504 (1990). "When a party to a comprehensive negotiated PSA seeks to modify any support obligation, that party must meet the threshold standard of changed circumstances[,]" which "render [its] continued enforcement unfair, unjust, and inequitable." J.B. v. W.B., 215 N.J. 305, 327 (2013); Konzelman v. Konzelman, 158 N.J. 185, 194 (1999). The Court must consider whether the change of circumstances is continuous. Lepis v. Lepis, 83 N.J. 139, 152

(1980). "Courts have consistently rejected requests for modification based on circumstances which are only temporary" Id. at 151; see also Larbiq v. Larbiq, 384 N.J. Super. 17, 22-23 (App. Div. 2006).

The motion judge reasonably found that the circumstances surrounding defendant's decrease in income was voluntary, temporary and too recent to establish change of circumstances. The PSA required defendant to begin paying alimony and child support in April 2014. Two months later, he changed careers, apparently motivated by his distress over the divorce and a simultaneous desire to earn more money. He went from a consistent salary of \$40,000 a year working as a manager - which previously allowed him to support his family as a sole provider - to a 100% commission-based job as a car salesman. Only four months had elapsed since defendant's career change. Furthermore, defendant stated that, although he did not make much money in September, in October he "[did] a lot better" and he expected to make more money in the future as he increased his proficiency.

Defendant also argues that the motion judge erred by enforcing the PSA without reviewing if it was fair and equitable. Defendant also argues that the PSA should be voided because he never signed it, never agreed to it and his signature was forged by his attorney. Inconsistently, defendant simultaneously argues that he

did sign the PSA, but under duress and pressure from his attorney. He did not raise these issues before the motion judge, nor file a motion pursuant to Rule 4:50-1, and we therefore do not consider them. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). We note when the settlement was placed on the record, defendant stated that he entered into the agreement freely and voluntarily.

Defendant maintains that New Jersey never had jurisdiction over this matter because the couple lived in Wisconsin during the marriage. He further argues the motion judge erred by not granting his request to change venue. The motion judge denied defendant's request to change venue to Wisconsin because the couple's children are located in New Jersey and the PSA provides that New Jersey law governs. Defendant submitted to New Jersey jurisdiction at the March 7, 2014 settlement hearing. The defense of lack of personal jurisdiction is lost when a party waives the requirement that the court have jurisdiction over him or her. Hupp v. Accessory Distributions, Inc., 193 N.J. Super. 701, 711 (App. Div. 1984).

Defendant argues finally that the motion judge erred by awarding plaintiff attorney fees. Pursuant to Rule 5:3-5(c), the court must consider the following factors when determining whether to grant attorney fees:

- (1) the financial circumstances of the parties;
- (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party;
- (3) the reasonableness and

good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

"An allowance for counsel fees and costs in a family action is discretionary." Eaton v. Grau, 368 N.J. Super. 215, 225 (App. Div. 2004). "On appeal, a decision regarding counsel fees will not be reversed absent a showing of an abuse of discretion involving a clear error in judgment." Tannen v. Tannen, 416 N.J. Super. 248, 285 (App. Div. 2010), aff'd o.b., 208 N.J. 409 (2011).

The motion judge reviewed each of the factors methodically. She noted the financial disparity of the parties. Plaintiff was living with her parents and working part-time, while defendant earned \$40,000 a year before he chose to change careers. The judge found that defendant acted in bad faith by failing to comply with the PSA and by voluntarily switching to a lower-paying job. The judge found that, in light of plaintiff's successful enforcement motion, "there's been a willful, continuous failure to pay." Her findings were supported by the evidence.

The motion judge was thoughtful in her determinations and did not abuse her discretion.

Affirmed.

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

