SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2620-15T3

WILLIAM SLOAN,

Plaintiff-Appellant,

v.

CHERYL SLOAN,

Defendant-Respondent.

Submitted March 27, 2017 — Decided April 6, 2017

Before Judges Sabatino and Haas.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket No. FM-04-1170-12.

Daniel K. Newman, attorney for appellant.

Michael A. Diamond, attorney for respondent.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff William Sloan appeals from the Family Part's January 22, 2016 order terminating plaintiff Cheryl Sloan's obligation to continue to pay him alimony. We reverse and remand for further proceedings.

The parties were married in June 1990 and divorced in June 2014. They have two children.

Pursuant to the parties' Matrimonial Settlement Agreement ("MSA"), which the trial court incorporated into the Final Judgment of Divorce, defendant was required to pay plaintiff $400 per month in permanent alimony beginning on April 1, 2015. In pertinent part, Paragraph 15 of the MSA further provided:

> For purposes of this [a]greement, the term "permanent" alimony shall be governed by existing New Jersey statutory and decisional law as of December 17, 2013, the date the parties appeared before . . . the Superior Court of New Jersey, Chancery Division-Family Part, Camden County. [Defendant] will be released from her obligation to pay alimony to the [plaintiff] upon satisfaction of the "permanency" aspect of this obligation, at which time she will be released from the obligation thereof, or upon the death of [plaintiff] or his remarriage.

On October 24, 2015, plaintiff and his girlfriend, I.G.,[1] participated in what they called a "civil commitment ceremony."[2] Plaintiff and I.G. did not obtain a marriage license prior to this ceremony. I.G. arranged for an officiant to conduct the ceremony and told the officiant in an e-mail that she and plaintiff were

[1] Because this individual is not a party to this litigation, we use initials to identify her in order to protect her privacy.

[2] The couple sent invitations to their family and friends inviting them to "share in their Celebration of Love at their Commitment Ceremony."

"NOT getting married via a marriage license. We want to be married under the eyes of God." The officiant provided a certification stating that she did not "marry" plaintiff and I.G. on October 24, 2015 and that she did not "see, receive, handle, transmit, sign or deliver any marriage license for the commitment ceremony between" plaintiff and I.G.

Nevertheless, both plaintiff and I.G. made postings on social media accounts stating that they were getting married. For example, plaintiff posted on September 3, 2015 that he was "marrying my best friend[,] [I.G.]" Plaintiff also announced his "engagement" to I.G. in a wedding magazine.

During the commitment ceremony, plaintiff and I.G. referred to each other as "husband" and "wife." At the end of the ceremony, the officiant stated, "I now pronounce you to be husband and wife. You may kiss your bride." In a subsequent internet post, I.G. referred to sharing a meal with plaintiff at a seafood restaurant by stating that she was having dinner with her "husband."

Upon learning of the ceremony, defendant filed a motion asking that her alimony obligation be terminated under Paragraph 15 of the MSA because plaintiff had remarried. Plaintiff opposed defendant's application and asserted that because he and I.G. never obtained a marriage license, he had not remarried within the intendment of Paragraph 15.

Following oral argument on January 22, 2016, the trial judge granted defendant's motion to terminate her alimony obligation. In a very brief oral decision, the judge acknowledged that plaintiff and I.G. were not legally married. However, even though testimony was not taken from the parties and I.G. at a plenary hearing, the judge concluded that plaintiff and I.G. had

> done everything to be married except for issue the certificate [sic] in an attempt to avoid losing alimony, and I find that to be intentional. And I don't think that's equitable and I don't think that that's fair. . . . I don't have a marriage whatsoever. But I have someone taking all the steps there are to be a married couple just to solely twist or abuse the language, what a "marriage" is. And that I'm not going to permit in my courtroom.

This appeal followed.

On appeal, plaintiff asserts that Paragraph 15 of the MSA only permitted defendant's alimony obligation to be terminated upon his remarriage. Because he and I.G. never obtained a marriage certificate, plaintiff contends that they were not legally married and, therefore, the judge erred by terminating alimony based on his participation in the commitment ceremony. We agree.

The scope of our review of the Family Part's orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We owe substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters. Id. at 413.

However, findings by a trial court are only "binding on appeal when supported by adequate, substantial, credible evidence." Id. at 412-13. Moreover, we owe no deference to the trial judge's legal conclusions, which we review de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Here, the trial judge did not engage a detailed analysis of Paragraph 15 of the MSA. On its face, however, defendant's alimony obligation could only be terminated under the provision upon plaintiff's "death or his remarriage."

With regard to the question of whether plaintiff and I.G. "married" each other at the commitment ceremony, N.J.S.A. 37:1-10 clearly provides:

> [N]o marriage contracted on and after December [1, 1939], shall be valid unless the contracting parties shall have obtained a marriage license as required by [N.J.S.A.] 37:1-2 . . . , and unless, also, the marriage, after license duly issued therefor, shall have been performed by or before any person, religious society, institution or organization authorized by [N.J.S.A.] 37:1-13 . . . to solemnize marriages; and failure in any case to comply with both prerequisites aforesaid which shall always be construed as mandatory and not merely directory, shall render the purported marriage absolutely void.
>
> [(emphasis added).]

As our former colleague Judge Mary Catherine Cuff observed in Yaghoubinejad v. Haghighi, N.J.S.A. 37:1-10 "accomplishes three

things. First, it abolishes common law marriage. Second, it requires that a license to marry be procured before the ceremony. Third, it requires that the marriage be solemnized by an authorized person or entity." Yaghoubinejad v. Haghighi, 384 N.J. Super. 339, 341 (App. Div. 2006).

Here, there is nothing in the record to indicate that plaintiff and I.G. ever obtained the marriage license required by N.J.S.A. 37:1-2 and N.J.S.A. 37:1-10 to make what occurred at the "commitment ceremony" a lawful marriage. Both plaintiff and the officiant certified that the couple did not have a marriage license; the officiant stated that she never "married" plaintiff and I.G.; and I.G. advised the officiant that she and plaintiff only wanted to be "married under the eyes of God."

The fact that plaintiff and I.G. participated in a ceremony where they referred to each other as husband and wife, and where the officiant declared them to be husband and wife at the conclusion of the ceremony is of no moment. In Lee v. Gen. Acc. Ins. Co., 337 N.J. Super. 509, 512 (App. Div. 2001), the plaintiff and his girlfriend, Jones, applied for a marriage license, but the license was denied because they did not obtain a timely blood test. They nevertheless participated in a marriage ceremony presided over by a member of the clergy and then lived together in a house they jointly purchased. Ibid.

Thereafter, Jones obtained an automobile insurance policy and listed her marital status as "single." Id. at 511. About six months later, the plaintiff was injured in an accident and later filed a claim under Jones's policy for uninsured motorist benefits. Id. at 512. However, these benefits were only available to a "'family member,' which was defined by the policy as a person related to the insured by 'blood, marriage, or adoption.'" Id. at 511.

In Lee, we held that because the plaintiff and Jones never obtained a marriage license as required by N.J.S.A. 37:1-10, they were not legally married and, therefore, the plaintiff was not eligible for coverage as a "family member" under Jones's policy. Id. at 514. In commenting upon the plaintiff and Jones's participation in a ceremonial wedding, we noted that that event "add[ed] nothing to the case [because] [u]nder our statutes, the wedding was meaningless[,] [and] [t]he marriage was void from its inception." Id. at 516 (citing N.J.S.A. 37:1-10). We also stated:

> We . . . believe that a brightline rule best serves the interests of justice. Ceremonial marriages carry with them varying degrees of solemnity, publicity and prior deliberation. The courts should not be placed in a position of having to pick and choose which forms of relationships are to be recognized as having the elements of marriage, and which do not.
>
> [Ibid.]

Applying these principles to the present case, we are constrained to reverse the trial judge's conclusion that plaintiff's and I.G.'s participation in the "commitment ceremony" and their prior and subsequent statements that they were married were tantamount to a "marriage" under Paragraph 15 of the MSA. Because the judge did not conduct an evidentiary hearing, there is nothing in the record to indicate that the parties intended the term "marriage" in the MSA to refer to anything other than a lawful marriage conducted under the authority of a validly-issued marriage license as required by N.J.S.A. 37:1-2 and N.J.S.A. 37:1-10. Thus, because plaintiff and I.G. are not legally married, the judge mistakenly terminated defendant's alimony obligation under Paragraph 15.

However, although we have concluded that the trial judge should not have terminated defendant's alimony obligation, nothing prevented the court from considering whether defendant's obligation should have been modified because plaintiff was now cohabiting with I.G. As noted above, Paragraph 15 provided that defendant's alimony obligation would continue until plaintiff's death or remarriage. Thus, this provision did not compel termination of defendant's payments upon cohabitation by plaintiff. Nevertheless, the parties did not include a specific "anti-Lepis" provision in their MSA barring defendant's support

obligation from being modified, rather than terminated, if by cohabiting with another, plaintiff's economic needs changed.

It is well established that absent an agreement specifying to the contrary, cohabitation by a party may constitute a changed circumstance warranting a modification of alimony when it is coupled with a change in the recipient's economic needs and circumstances. Lepis v. Lepis, 83 N.J. 139, 151 (1980). If the payor spouse can prove cohabitation of the dependent spouse, the payor can seek a reduction in alimony by showing either that the dependent spouse's economic needs have decreased due to the financial assistance of another or by showing that the payor's alimony payments are subsidizing the third-party cohabitant. Boardman v. Boardman, 314 N.J. Super. 340, 347 (App. Div. 1998).

Here, it appears from the record that although they are not legally married, plaintiff and I.G. are living together. However, because the parties did not exchange financial information or engage in other discovery, the record does not disclose the extent to which plaintiff's and I.G.'s finances are intertwined or whether they share expenses.

Under these unique circumstances, we remand this matter to the trial court to consider whether a modification of alimony is appropriate due to changed circumstances. We suggest that the court hold a prompt case management conference with the parties

as soon as practical to determine what discovery is needed, the timetable for completing same, and whether a plenary hearing is necessary to resolve any disputed facts or questions of contract interpretation of the MSA.

The remand proceedings, including the conduct of any plenary hearing, should be completed with the issuance of a decision within 120 days of the date of this opinion. Pending the completion of the remand, and subject to a possible retroactive adjustment for arrears should the court order that alimony be reinstated at the original or reduced amount, defendant's alimony obligation to plaintiff shall remain suspended.

Finally, we note that before the trial court, neither party argued that the judge should have applied the new provisions of N.J.S.A. 2A:34-23 in this case. On September 10, 2014, the Legislature adopted amendments to "N.J.S.A. 2A:34-23, designed to more clearly quantify considerations examined when faced with a request to establish or modify alimony." Spangenberg v. Kolakowski, 442 N.J. Super. 529, 536-37 (App. Div. 2015) (holding that the Legislature did not intend that these amendments be applied retroactively to orders specifying the duration of alimony or incorporating agreed-upon terms of alimony). One of the amendments permits a trial court to suspend or terminate alimony upon proof that the dependent spouse is cohabiting with another

individual, even if the dependent spouse's economic need has not been affected. N.J.S.A. 2A:34-23(n). Because the parties did not address the applicability of this amendment to the question of whether defendant's alimony obligation should be modified due to plaintiff's cohabitation with I.G., they should have the opportunity to do so on remand.

Reversed and remanded. We do not retain jurisdiction.