RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3532-14T3

K.C.,

Plaintiff-Respondent,

v.

D.C.,

Defendant-Appellant.

Argued April 25, 2017 – Decided September 29, 2017

Before Judges Espinosa, Suter and Grall.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-1782-11.

Randy J. Perlmutter argued the cause for appellant (Kantrowitz, Goldhamer & Graifman, PC, attorneys; Mr. Perlmutter and William T. Schiffman, on the brief).

Megan S. Murray argued the cause for respondent (Law Offices of Paone, Zaleski, Brown & Murray, attorneys; Ms. Murray, of counsel and on the brief).

PER CURIAM

Defendant appeals from a judgment entered following a trial in this matrimonial matter, challenging the alimony award, aspects of the trial court's decision on equitable distribution, and the court's appointment of a mediator and allocation of his fees. We affirm in part and reverse in part.

I.

The parties were married in 1996; the complaint for divorce was filed fifteen years later in 2011. Plaintiff, a college graduate, left the workforce shortly before the first of their two children was born in 1997. She did not work outside the home thereafter. Defendant was employed as a consultant and reported the following income on his tax returns for the year the complaint was filed and the three previous years: $521,526 (2008), $575,151 (2009), $608,932 (2010) and $371,927 (2011).

II.

The "factual findings and legal conclusions of [a] trial judge" in a non-jury case should not be disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). Deference to a court's factual findings "is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Cesare v.

Cesare, 154 N.J. 394, 412 (1998). In particular, the courts have "emphasize[d] the narrow contours of appellate review pertaining to the division of marital assets," and have "'rel[ied] heavily . . . on the discretion of the trial judge in making these delicate and difficult judgments.'" Wadlow v. Wadlow, 200 N.J. Super. 372, 377 (App. Div. 1985) (quoting Gibbons v. Gibbons, 174 N.J. Super. 107, 114 (App. Div. 1980)).

III.

In Point I, defendant argues the trial court erred in awarding plaintiff one-half of a "one-time celebratory grant" of 14,492 restricted share units (RSUs) awarded to him on January 1, 2011, four months before the complaint for divorce was filed.

Citing Elkin v. Sabo, 310 N.J. Super. 462, 472-73 (App. Div. 1998), defendant argues the record is unclear as to whether the RSUs were granted as a reward for past performance or as an incentive for future performance and that the matter must be remanded for a further determination by the court. We disagree.

In 2010, defendant received a promotion from his employer, Accenture LLP, that included a higher salary and a grant of 14,492 RSUs, effective January 1, 2011, pursuant to a Standard Form of Celebratory Restricted Share Unit Agreement for fiscal year 2011 that vested pursuant to a schedule over the period from 2011 to 2017.

"Property 'clearly qualifies for distribution' when it is 'attributable to the expenditure of effort by either spouse' during marriage." Pascale v. Pascale, 140 N.J. 583, 609 (1995) (quoting Painter v. Painter, 65 N.J. 196, 214 (1974)). Even when property is acquired after a complaint for divorce is filed, it is "normally" subject to equitable distribution if it is "a reward for or a result of efforts expended during the marriage." Id. at 612. "The majority of jurisdictions, like New Jersey, hold that stock options acquired during marriage are subject to equitable distribution." Heller-Loren v. Apuzzio, 371 N.J. Super. 518, 530 (App. Div. 2004). As with any other property at issue in a divorce proceeding, the dispositive question is whether the stock options were granted "in consideration for actions undertaken during the marriage." Ibid. The burden of establishing the immunity of any given property from equitable distribution lies with the party seeking exclusion. Pascale, supra, 140 N.J. at 609.

Defendant, who was self-represented at trial, relied upon his own testimony to establish that the RSUs were immune from equitable distribution. He argued the RSUs were granted to him as a guarantee of his future good performance, and therefore, any RSUs that vested after divorce proceedings began were not marital property subject to equitable distribution. The court allowed

defendant additional time after trial to provide evidence in support of his theory, but he did not do so.

The trial court found the RSUs awarded in January 2011 were "subject to equitable distribution and shall be equally divided," observing defendant provided no evidence to support his theory that the award was for future performance. The court noted the RSUs may not be transferable outright to Wife as a non-employee of Accenture, and therefore ordered defendant to establish a trust to transfer the value of the RSUs as they vest. Specifically, the court stated that defendant

> shall monetize [Wife's] 50% interest in the vesting RSUs within fourteen (14) days of a vesting event. [Defendant] shall automatically sell [Wife's] shares and pay 100% of the proceeds to [Wife], less any amount withheld by [Defendant's] employer for tax purposes.

Not only did defendant fail to support his characterization of the RSUs with any documentary evidence, the evidence before the court supported the conclusion that the RSUs were awarded for performance during the marriage.

Accenture's compensation overview states that RSU grants are awarded in recognition of high-ranking employees' efforts, and does not mention their use as a guarantee for future performance. In a letter to plaintiff's attorney, Accenture stated that RSU grants of the type at issue are awarded annually "based on level

of responsibility and individual performance rating" at the time of the grant. To be eligible for such a grant, the employee must be rated "'Above' or higher." The stated purpose of the Accenture PLC 2010 Share Incentive Plan is

> to aid the Company . . . in recruiting, retaining and rewarding key employees . . . of outstanding ability and to motivate such employees . . . to exert their best efforts . . . by providing incentives through the granting of Awards. The Company expects that it will benefit from the added interest which such key employees . . . will have in the welfare of the Company as a result of their proprietary interest in the Company.

Aside from the generalized aspiration that "key employees" who are granted RSUs will have an enhanced interest in the welfare of Accenture, there is no requirement that the employee meet any performance goals before a batch of RSUs will vest pursuant to the schedule. The only condition for vesting is "continued employment." Moreover, in the event the employee is no longer employed due to death or disability, all of the RSUs granted, whether vested or not, are transferred to the employee or his estate. Obviously, the transfer of RSUs following death or disability would not be based on future performance.

In sum, all the documentary evidence in the record[1] states that such promotional grants are awarded based on performance ratings at the time of the award, in recognition of employees' efforts, and no document provided to the court states defendant must meet any given performance goal to trigger the vesting of RSUs that are part of the grant. Contrary to defendant's argument, the record was clear, and fully supported the trial court's determination that the RSUs were subject to equitable distribution.

IV.

The other equitable distribution decision challenged by defendant concerns a ski home the parties purchased in 2004, with defendant's brother and sister-in-law, John and Ruth Ann Cowles (the Windham House). All four family members were listed on the home's deed as tenants in common. Plaintiff testified all four intended to be equal owners. Defendant argued that John and Ruth Ann owned a greater share in the property than plaintiff and defendant, and therefore, plaintiff should not receive a twenty-five percent share as part of the equitable distribution. No

[1] The court-appointed economic expert, also testified that based upon the documentation he had reviewed, the RSUs were "awarded for service provided".

document was produced to show that ownership was other than equal among the four owners.

The trial court awarded a one-fourth share of the value of the Windham House to plaintiff as equitable distribution. Defendant argues the trial court erred in doing so and in improperly ignoring evidence that the purchase was a joint venture. He contends the matter should be remanded to the trial court for proper consideration of the issue. We disagree.

First of all, we note that defendant did not argue at trial that the house was a "joint venture." He argued simply that the two families owned it on an unequal basis and put differing amounts of money into its maintenance.

Under New York law, "[a] joint-venture agreement is generally defined as a special combination of two or more persons wherein some specific venture profit is jointly sought without any actual partnership or corporate design." Ackerman v. Landes, 112 A.D.2d 1081, 1082 (N.Y. App. Div. 2d Dep't 1985) (citation and internal quotation marks omitted). The "essential elements" of such an undertaking are:

> an agreement manifesting the intent of the parties to be associated as joint venturers, a contribution by the coventurers to the joint undertaking (i.e., a combination of property, financial resources, effort, skill or knowledge), some degree of joint proprietorship and control over the

> enterprise, and a provision for the sharing of profits and losses.
>
> [Ibid.]

No agreement was presented that satisfied these elements. Further, there does not appear to have been any "sharing of profits and losses" related to the house, or in fact any "profits" at all related to its ownership, since it was apparently used by the families solely as a personal ski house and sometimes a place to entertain guests.

Moreover, as described by defendant and his brother, their agreement entailed ongoing contributions to the expenses of the house, that would neither be performed within one year nor completed before the end of a lifetime. As a result, the agreement was void under New York law unless in writing. N.Y. Gen. Oblig. Law § 5-701 (Consol. 2017).

Defendant contends there was ample testimony to prove the existence of a joint venture. First, he cited the undisputed fact that John and Ruth Ann contributed $50,000 more than the parties to the $350,000 purchase of the house. Both defendant and his brother testified there was an annual accounting of expenses that demonstrated John and Ruth Ann continued to contribute more to

expenses.[2] However, this document could not be authenticated and was never produced by defendant in response to discovery requests.

John testified the parties owned a smaller percentage in the home and that defendant and their father also owned a share in the house based on "sweat equity." He acknowledged, however, that the deed reflected equal ownership and would control in the event of the death of any of the four owners. He also conceded the parties had never created any written agreement stating the way in which the four owners paid for the house's expenses would result in unequal ownership interests.

What was entirely lacking from the testimony was any suggestion the parties intended to form an "enterprise" of any kind or that there was a "provision for the sharing of profits and losses." Ackerman, supra, 112 A.D.2d at 1082. The house was purchased and used as a private family ski vacation home.

In its decision, the trial court noted the deed stated the property was purchased by defendant, plaintiff, John and Ruth-Ann Cowles as "tenants in common," and that defendant had "provided no evidence that the parties were anything but tenants in common with his brother and sister-in-law." It found that under New York

[2] Plaintiff disputed this, testifying that bills for the Windham House were paid equally by the parties, and John and Ruth Ann had an annual expense spreadsheet prepared to insure their contributions to expenses were equal.

law, which governed the issue, a tenancy in common involves an interest in property held by two or more persons in which no right of survivorship exists. The court concluded defendant and plaintiff together owned a fifty percent interest in the Windham House. It ordered defendant to pay plaintiff $113,750 representing her half of that fifty-percent share,[3] and ordered plaintiff to transfer her interest to defendant in exchange.

The court found, based upon the evidence before it, namely the deed and the testimony given by plaintiff and John Cowles, that the Windham House was owned equally by all four family members. That the court apparently found plaintiff's testimony and the text of the deed more credible than defendant's brother, and thus gave those sources more weight in its decision, does not render its decision erroneous. We concur with the trial court's application of New York law to the facts here. As to defendant's argument that the trial court erred in excluding evidence that he now claims supported his characterization of the ownership as a joint venture, we note that our review of evidentiary rulings is governed by an abuse of discretion standard. See, State v. E.B., 348 N.J. Super. 336, 344-345 (App. Div. 2002). We discern no abuse of discretion in the court's ruling.

[3] The parties stipulated that the value of the Windham house is $455,000.

V.

Defendant claims the trial court made multiple errors in making its determination regarding alimony. We find merit in two of his arguments, requiring a remand.

"A Family Part judge has broad discretion in setting an alimony award." Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012). An appellate court will "give deference to a trial judge's findings as to issues of alimony, if those findings are supported by substantial credible evidence in the record as a whole." Reid v. Reid, 310 N.J. Super. 12, 22 (App. Div.), certif. denied, 154 N.J. 608 (1998).

A.

In arriving at the alimony award, the court first considered the statutory factors set forth in N.J.S.A. 2A:34-23(b).

The court found plaintiff was forty-four years old, had a college degree but had not worked outside the home for fourteen years, rejecting defendant's contention to the contrary. The court imputed annual income to her of $35,000 and an additional $40,000 in investment income. The court found defendant earned over $400,000 in 2013 and would earn at least as much in 2014.

As to the standard of living in the marriage, the court found:

> The parties had a joint marital lifestyle that required them to spend about $19,000 on expenses and save about $9,000, for a total

> of $28,000 a month. It is unlikely that they will both be able to maintain the joint marital lifestyle. To do so, they would need combined net income of about $672,000 a year, or in excess of $800,000 gross a year.

While defendant could be expected to earn approximately $400,000, plaintiff's earning capacity is far more limited. Moreover, plaintiff did not express any "desire to be self-sufficient or contribute to her support in any meaningful way."

The trial court found plaintiff was and remained the primary caretaker for the children, making "significant non-financial contributions" but not working outside the home after their first child was born. The court also noted the children were now teenagers attending school full-time, posing no impediment to plaintiff obtaining full-time employment.

As to equitable distribution and income from other assets, the trial court observed the parties would share property valued in excess of $3.5 million. The court estimated that approximately $2 million of that amount represented the value of RSUs, bank and brokerage accounts.

The trial court concluded the parties "will need to reduce expenses and cannot each afford to live a lifestyle that would require them to spend $19,000 and save $9,000 a month." Alimony was awarded as follows:

> Alimony shall be paid at an annual rate of $100,000, based on Plaintiff's imputed income of $75,000 ($35,000 income and $40,000 in investment income) and Defendant's income of $352,000 (base salary of $312,000 a year plus $40,000 imputed for investment income). In addition, Defendant shall pay "additional alimony" of 33% of his total compensation from all sources, over and above his base salary. Defendant shall not be required to pay alimony on income in excess [of] $672,000 (after-tax) as this is the amount that would permit both parties to maintain the joint marital lifestyle. No evidence was presented regarding any rental income received by Defendant.

Defendant was required to provide plaintiff with documentation of his income by February 1 of each year, "including copies of his previous year's W-2s, year-end pay stubs, and any documentation reflecting any compensation received from any source received during the prior calendar year."

B.

Defendant challenges the court's order that he pay additional alimony of "33% of his total compensation from all sources, over and above his base salary." (emphasis added). He asserts the RSUs granted to him in 2011, batches of which vest each year, should not be considered "income" for alimony purposes because half of the RSUs must be transferred to plaintiff upon vesting as part of equitable distribution. He cites Innes v. Innes, 117 N.J. 496 (1989), for the proposition that this is "double-dipping."

Throughout the proceedings, plaintiff contended any RSUs granted during the marriage were subject to equitable distribution, but that RSUs granted after the marriage would be "considered as income to defendant as they vest" for purposes of calculating alimony. In summation, plaintiff's counsel presented her request for alimony as follows:

> Moreover, assuming the Wife receives equitable distribution of all RSUs granted to the Husband prior to the date of Complaint (May 6, 2011), the Wife should not be entitled to share in, for alimony purposes, any equity compensation earned by the Husband as the result of the vesting of these pre-Complaint RSUs. Rather, the Wife should receive as and for alimony 33% gross of any post-Complaint equity compensation earned by the Husband as the result of the vesting of RSUs received by the Husband after May 6, 2011.

The court did not specifically state in its opinion that the value of the RSUs that vest each year will be excluded from consideration when calculating defendant's "compensation from all sources." However, the order does formalize the distinction between pre- and post-divorce grants of RSUs by stating the former must be equally divided between the parties as they vest while the latter will be retained by defendant. A reasonable interpretation of the trial court's decision, which adopts much of plaintiff's proposal and language concerning alimony, is that the court ruled that the RSUs granted in 2011 were marital property subject to

equitable distribution, and only the RSUs awarded after the marriage will be considered income for alimony purposes. In light of the fact that defendant's alimony obligation continues for twelve more years, we conclude that this issue is best remanded to the trial court for clarification, as discussed further regarding the next issue raised.

C.

Defendant also challenges the methodology the trial court applied to the additional alimony award. Without citing any binding precedent, he contends the percentage formula used by the court is not "permissible."[4] We discern no error in the use of a percentage to calculate additional alimony.

However, as we have noted, the term "all sources" would benefit from clarification. In addition, we find merit in defendant's challenge to the cap used by the court for additional alimony. The trial court defined the cap as follows: "Defendant shall not be required to pay alimony on income in excess [of] $672,000 (after-tax) as this is the amount that would permit both parties to maintain the joint marital lifestyle." The only other

[4] We note the unpublished opinion relied upon by defendant is distinguishable as it concerned the modification of support obligations without making "crucial factual determinations." As we have noted, the trial court made appropriate factual findings pursuant to N.J.S.A. 2A:34-23(b) as part of its alimony award determination.

reference to $672,000 in the trial court's opinion is contained in its earlier assessment of the amount the parties needed to finance their joint marital lifestyle and the court's extrapolation that the expenses would be exactly double to maintain that lifestyle separately. The court noted this would require "combined net income of about $672,000" and a gross income in excess of $800,000.

As defendant asserts, he has never earned more than $600,000 pre-tax in any given year. In effect, then, the cap set by the trial court is no cap at all and is not tethered to a determination of what is needed to maintain a lifestyle enjoyed during the marriage, giving due consideration to defendant's earning capacity. Accordingly, we remand to the trial court to define what is meant by "all sources" subject to the additional alimony calculation, to establish the cap for income subject to additional alimony calculation, to explain the basis for the 33% formula and to set forth reasons for those decisions. Our remand is not intended to preclude the judge from considering whether a formula for an automatic adjustment is a preferred approach over leaving any such adjustment an open question subject to review pursuant to Lepis v. Lepis, 83 N.J. 139 (1980) and Crews v. Crews, 164 N.J. 11 (2000) on a showing of changed circumstances.

D.

Defendant's remaining arguments regarding alimony lack merit.

In challenging the trial court's finding regarding his income, defendant argues he does not receive all income from his vesting shares because he does not cash them in. This argument is refuted by his own concession that the RSUs appear on his W-2 tax forms as income in the years in which they vest. He also contends the court should have used an average of several years to determine his income because he was no longer eligible to receive the additional compensation that led to his earning as much as $608,932 in 2010. This argument fails because the trial court relied upon defendant's known earnings at the time of the trial.

Defendant also argues the court erred in ignoring the fact the parties saved significant money because he intended to retire at fifty years of age and in failing to take the amount of equitable distribution into consideration in determining the amount of alimony. These challenges lack merit. The court's statement of reasons makes repeated references to the equitable distribution award, imputes income to plaintiff based upon anticipated income from that award, and acknowledges that the parties saved aggressively as part of their lifestyle.

Defendant's challenge to the duration of the alimony award lacks sufficient merit to warrant discussion, R. 2:11-3(e)(1)(E), beyond the following brief comments. Defendant contends the trial court failed to take into account the pendente lite support he paid to plaintiff pursuant to a consent order. N.J.S.A. 2A:34-23 does not require the length of an alimony period to be reduced by the number of years the paying party has paid pendente lite support, and instead states only that the payment of pendente lite support must be "consider[ed]" when making decisions as to alimony. The trial court did so here, making note of the pendent lite support when analyzing the N.J.S.A. 2A:34-23(b) alimony factors, and also addressing it directly in a section concerning plaintiff's request for additional support. Additionally, the court did not base the period of the open durational alimony solely upon the duration of the parties' marriage. The court stated the alimony award was appropriate "based upon the statutory factors, including the length of the marriage, Plaintiff's clear economic dependency, Plaintiff's responsibility of caring for the children and diminished earning capacity because of her role as the caretaker of the family."

VI.

After the trial concluded, the court found the parties failed to provide adequate information regarding defendant's compensation

and appointed an accounting firm to obtain additional information on that issue and to perform a lifestyle analysis. Robert Brown, CPA, prepared two expert reports pursuant to this appointment. After the expert appointment, the parties met with him at the court's suggestion in an unsuccessful attempt at mediation. Defendant did not object to Brown's appointment as expert or service as mediator and, in fact, requested that Brown be recalled as a witness when additional testimony was taken after the trial court re-opened the case.

Defendant now argues the trial court erred in making the expert appointment after the trial had concluded and that because Brown had attempted to mediate the matter, he had a conflict that precluded him testifying as an expert. This argument is wholly lacking in merit and, because defendant presents it for the first time on appeal, we need not consider it. US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 483 (2012).

VII.

In Point IV, defendant argues the trial court erred in ordering him to pay the full amount of the fees for a second parenting coordinator and for Brown's expert fees.

He argues that burdening him with the entire responsibility for the fees of the second parenting coordinator was inconsistent with the court's earlier decision to allocate the fees of the

first parenting coordinator. He also contends the reports prepared by Brown were "a complete waste of time and money" and complains the court failed to allocate his fees. Defendant contends that the failure to allocate fees constituted a gross abuse of discretion.

As a preliminary matter, we reject defendant's contention that the trial court's appointment of Brown was improper. The court made it clear that an economic expert was necessary due to defendant's lack of preparation, failure to produce evidence in support of his claims, and series of inconsistent case information statements. Under Rule 5:3-3(c), "[w]henever the court concludes that disposition of an economic issue will be assisted by expert opinion," it may appoint an expert. Such an expert "may be selected by the mutual agreement of the parties or independently by the court." R. 5:3-3(d). When an economic expert is appointed, Rule 5:3-3(i) provides that "the court may direct who shall pay the cost of such examination, appraisal, or report."

The court also had the authority to determine how the expert's fees would be paid. Under N.J.S.A. 2A:24-23,

> The court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just. In considering an application, the court shall review the financial capacity of each party to conduct

> the litigation and the criteria for award of counsel fees that are then pertinent as set forth by court rule.

Further, under Rule 5:3-5(c), in determining a fee award the court should consider

> (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.

Here, the parties stipulated that McGoughran should be a parenting coordinator in the case. During the proceedings, plaintiff took the position that defendant should pay all fees for McGoughran, because the coordinator did not accept American Express cards and so she could not pay him using the card defendant provided for pendente lite support. The court ordered that defendant pay McGoughran's fees "subject to reallocation at the end of this case." In a later stipulation, the parties agreed, "Judge shall determine allocation of fees." In its final order of February 13, 2015, the court stated that defendant shall pay all outstanding fees owed to McGoughran, totally $3,648.05.

As to Brown, the court noted that defendant could not explain his compensation structure at Accenture at his deposition and had suggested "accountants should be retained to figure it out." The court later reiterated that the reason for its appointment of Brown was that defendant had "presented proofs that were unintelligible" on the subjects of the marital lifestyle and his income.

The court noted defendant submitted "wildly disparate Case Information Statements" in an effort to support his "utter insistence that the parties lived a modest lifestyle." The court found a review of defendant's case information statements "illustrate Defendant's total lack of credibility regarding his testimony on the joint marital lifestyle." For this reason, the court appointed Brown to perform a lifestyle analysis. Ultimately, the court found defendant "did not refute the overwhelming majority of the information included in Mr. Brown's report."

In general, an "award of counsel [or expert] fees in a matrimonial case rests in the sound discretion of the trial judge." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). Thus, review of a determination as to the allocation of such fees is "guided by the abuse of discretion standard." Platt v. Platt, 384 N.J. Super. 418, 429 (App. Div. 2006). The court did not make any explicit findings as to why it allocated all of McGoughran's and

Brown's fees to defendant in its final decision. However, the economic disparity between the parties that led the court to impose all of McGoughran's fees on defendant at the outset has continued post-divorce. In addition, it is evident the assistance of the economic expert was made necessary by defendant's failure to submit proofs to support his contentions regarding lifestyle, his compensation and his characterization of the RSUs. Moreover, defendant insisted that Brown should be recalled for a second day of testimony, and then refused to participate in questioning him. Under these circumstances, we are satisfied that the trial court's decision to have defendant be responsible for all expert fees was not an abuse of discretion.

VIII.

In light of its award of "open-durational alimony for fourteen" years, the trial court required defendant to maintain no less than $1.5 million in term life insurance on his life, naming plaintiff as beneficiary, until February 28, 2029. The trial court also imposed a separate life insurance requirement on both parties that was tied to the children's emancipation. At the time of judgment in February 2015, the parties' children were eighteen and fourteen years old. The court ordered, "Based on the child support award and the age of the minor children, both parties shall maintain no less than $250,000 in life insurance on their

respective life [sic] naming the children as equal beneficiaries thereof, until the children are emancipated."

Defendant argues the court should have provided that he can reduce his $1.5 million insurance obligation "designed to initially cover his support obligations as those support obligations reduce." In the alternative, he states the court should have provided that if the policy amount exceeds the amount of support secured at the time of his death, the excess should be returned to his estate. Defendant cites Konczyk v. Konczyk, 367 N.J. Super. 512 (App. Div. 2004), to support his argument.

In his argument, defendant does not contend he asked for the relief he now seeks on appeal. In the absence of a request, he essentially asks this court to find the trial court erred in failing to incorporate such a provision sua sponte. Konczyk does not stand for that proposition. In Konczyk, the husband removed his former wife as a beneficiary in violation of his alimony obligation. We affirmed a trial court's decision that the supported spouse was entitled to the amount of outstanding alimony and not the full amount of the insurance policy the decedent was required to maintain. Under the circumstances, we find no reason to disturb the trial court's decision.

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