SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4643-14T3

NARSAN LINGALA,

Plaintiff-Appellant,

v.

SAROJA ALKANTI, f/k/a
SAROJA LINGALA,

Defendant-Respondent.

Submitted May 15, 2017 – Decided June 16, 2017

Before Judges Haas and Geiger.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-2371-11.

Keith, Winters & Wenning, LLC, attorneys for appellant (Brian D. Winters, on the briefs).

Bhavini Tara Shah, attorney for respondent.

PER CURIAM

Plaintiff Narsan Lingala appeals from a May 28, 2015 order denying his post-judgment motion to set aside a matrimonial settlement agreement ("MSA") entered into by the parties on July 10, 2012. We affirm.

Plaintiff and defendant Saroja Alkanti, formerly known as Saroja Lingala, were married on December 2, 1995. They had two children, a son born in 1997 and a daughter born in 2003. Plaintiff filed a complaint for divorce on May 9, 2011. Defendant filed an answer and counterclaim. This heavily litigated divorce action was the subject of numerous pretrial and post-judgment motions. The pretrial motions included several discovery enforcement motions filed by defendant to obtain financial information regarding plaintiff's business and income. Both parties filed post-judgment motions to enforce various provisions of the MSA.

Prior to trial, the parties participated in a matrimonial early settlement panel, R. 5:5-5, and economic mediation with a private mediator, both of which were unsuccessful.

The trial began on June 25, 2012, but the parties reached a global settlement before the trial was completed. Plaintiff takes issue with certain events that transpired during the trial after the trial judge learned there was an outstanding warrant for the arrest of plaintiff for violating a final restraining order entered against him in Massachusetts.[1] Plaintiff was placed under arrest and removed from the courtroom for processing. Plaintiff then

[1] Notably, defendant was not a party to the Massachusetts proceeding in which the final restraining order and arrest warrant were issued.

returned to the courtroom handcuffed. The trial then continued that afternoon.

The trial was scheduled to recommence the next day at 10:00 a.m. Plaintiff was again brought into the courtroom in handcuffs. Facing the prospect of a continued trial, the parties engaged in lengthy settlement negotiations from approximately 10:00 a.m. until late afternoon. Plaintiff remained handcuffed and was restricted to the courtroom during the negotiations. He was accompanied by his attorney and a friend who was present to help him. After engaging in daylong settlement negotiations, the parties reached a global settlement resolving all outstanding issues.

Later that same day, the trial judge conducted a thorough hearing to determine whether the parties had entered into the agreement knowingly and voluntarily, without force or duress, and were satisfied that the agreement was fair and equitable to both of them. Prior to having the exact terms of the settlement placed on the record, the trial judge cautioned the parties to "listen very carefully" to the terms of the agreement about to be recited, because once agreed upon, the agreement would be final, and there would be no renegotiating or changing the agreement. The trial judge then conducted a thorough voir dire.

Plaintiff testified that he heard and understood the terms recited in court, which accurately reflected his understanding of the agreement. He indicated that the agreement resolved all the issues between him and his wife. He stated that no one forced or threatened him to agree to any of the terms, and that he agreed to the terms voluntarily. He testified that he was satisfied with the services of his attorney throughout the proceedings. He stated that he believed the agreement was fair and equitable to both parties under all the circumstances. He further testified that given his general economic circumstances, he would not be able to maintain a lifestyle after the divorce that is similar to what he enjoyed during the marriage. Nonetheless, he was still willing to enter into the agreement. Defendant testified similarly, except for indicating that she would be able to maintain a lifestyle after the divorce that is similar to what she enjoyed during the marriage.

Based on their testimony, the trial judge found that: (1) the parties understood the terms of the agreement; (2) the agreement was entered into voluntarily, without coercion or duress; (3) the parties were represented by able and extremely hardworking counsel, with whom they are both satisfied; (4) the parties were satisfied that the agreement was fair and equitable to both of them; and (5) plaintiff had chosen to enter into the agreement

freely and voluntarily even though he felt that he would not be able to maintain the marital standard of living after the divorce. The trial judge granted a dual judgment of divorce and incorporated the terms of the oral agreement into the final judgment of divorce.

The terms of the settlement were also set forth in a seven-page handwritten agreement that was prepared and signed by both parties and their attorneys while in court. Two weeks later, plaintiff executed a formal typed version of the MSA incorporating the terms of the July 10, 2012 handwritten agreement with some additional terms. By that point, plaintiff was no longer under arrest or incarcerated.

As part of the MSA, plaintiff agreed to pay child support of $358 per week in accordance with the child support guidelines, based upon imputed annual income of $162,500 and defendant's W-2 income of $47,000. The agreement further provided that for purposes of funding secondary education, the minimum income to be imputed to plaintiff is $150,000.

Plaintiff is the sole owner of a closely held Subchapter S Corporation, LMN Solutions, Inc. Plaintiff did not retain an expert to value his business and testify at trial. The equitable distribution negotiations took into account the valuation of his business by defendant's expert, Michal H. Karu, CPA/CFF. In his preliminary report, Karu opined that the "fair value" of

plaintiff's business was $214,000. Karu did not testify at the trial because the parties reached a global settlement during plaintiff's case. Under the terms of the settlement, plaintiff retained full ownership of his business, free and clear of any equitable distribution claim of defendant. Plaintiff waited until 2014 to retain an expert to appraise his business. His expert valued the business at $50,000.

Following their divorce, the parties engaged in extensive post-judgment motion practice resulting in the following orders that are pertinent to this appeal: (1) an October 26, 2012 order denying plaintiff's motion to declare the MSA void, and to recalculate child support and spousal support; (2) a December 21, 2012 order denying plaintiff's motion for reconsideration of the October 26, 2012 order; (3) a February 11, 2013 consent order enforcing certain provisions of the MSA; (4) an April 18, 2013 consent order imposing a qualified domestic relations order (QDRO) on an investment account, and further ordering "that all other provisions of the [MSA] shall remain in full force and effect;" (5) an April 3, 2014 order denying plaintiff's motion to reduce child support. The December 21, 2012 order stated that plaintiff's motion for reconsideration was denied because he had "failed to demonstrate a change of circumstances since the date of signing the [MSA] sufficient to merit reconsideration."

Thereafter, in October 2014, more than twenty-six months after he entered into the MSA, plaintiff moved for fifteen different forms of relief, including a "reevaluation" of his "financial situation based on the new forensic accounting report and, if appropriate, recalculating plaintiff's child support and alimony obligations." Plaintiff requested a plenary hearing to address the voluntariness and alleged unconscionablity of the MSA.

Plaintiff contends that he did not enter into the MSA voluntarily because it was the product of undue pressure and duress. He claims that the undue pressure and duress resulted from the following circumstances: (1) the trial judge's negative attitude and hostility toward him; and (2) being handcuffed during a portion of the trial and the negotiation of the MSA. Plaintiff further contends that the MSA is unfair, inequitable, and unconscionable because his income and the value of his business were overstated.

After hearing extended oral argument, the motion judge issued a May 28, 2015 order and five-page statement of reasons denying the aspects of plaintiff's motion which are the subject of this appeal without prejudice, including his request for a plenary hearing.

Plaintiff raises the following arguments on appeal:

POINT ONE

SCOPE OF REVIEW.

POINT TWO

THE PARTIES' MATRIMONIAL SETTLEMENT AGREEMENT CANNOT BE ENFORCED AND MUST BE SET ASIDE BECAUSE THE SAME WAS BOURNE OF DURESS AND/OR IS UNCONSCIONABLE.

POINT THREE

TRIAL COURT ERRED IN FAILING TO FIND THAT PLAINTIFF HAD A PRIMA FACIE SHOWING OF CHANGED CIRCUMSTANCES WARRANTING A REVIEW OF ALIMONY AND CHILD SUPPORT.

POINT FOUR

THE TRIAL COURT ERRED AS A MATTER OF LAW AND/OR ABUSED ITS DISCRETION BY DECIDING THIS MATTER ON THE BASIS OF CONFLICTING FACTUAL CERTIFICATIONS; RATHER, THE COURT SHOULD HAVE CONDUCTED A PLENARY HEARING.

We have considered plaintiff's arguments in light of the record and applicable law, and are not persuaded by any of them. We affirm substantially for the reasons expressed by Judge Christopher D. Rafano in his well-reasoned statement of reasons attached to the May 28, 2015 order. We add the following comments.

"[W]hile settlement is an encouraged mode of resolving cases generally, 'the use of consensual agreements to resolve marital controversies' is particularly favored in divorce matters." Weishaus v. Weishaus, 180 N.J. 131, 143 (2004) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). Spousal agreements "are

essentially consensual and voluntary in character and therefore entitled to considerable weight with respect to their validity and enforceability notwithstanding the fact that such an agreement has been incorporated in a judgment of divorce." Petersen v. Petersen, 85 N.J. 638, 642 (1981). "For these reasons, 'fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed.'" Konzelman, supra, 158 N.J. at 193-94 (quoting Smith v. Smith, 72 N.J. 350, 358 (1977)). "A settlement agreement will be reformed, however, where a party demonstrates that the agreement is plagued by 'unconscionablity, fraud, or overreaching in the negotiations of the settlement.'" Weishaus, supra, 180 N.J. at 143-44 (quoting Miller v. Miller, 160 N.J. 408, 419 (1999)). Courts have continuing power to oversee divorce agreements, and the discretion to modify them on a showing of changed circumstances that render their continued enforcement unfair, unjust and inequitable. Konzelman, supra, 158 N.J. at 194 (citing Lepis v. Lepis, 83 N.J. 139, 154-55 (1980)).

Plaintiff contends that his child support and spousal support obligations were based on an overstated imputed income level. Plaintiff stipulated to an imputed annual income of $162,500 for child support purposes, and an imputed income of no less than $150,000 for purposes of calculating responsibility for the cost of the children's secondary education. Stipulations serve as a

tool that enables parties to avoid the expense, trouble, and delay of adducing proofs on facts that, absent a stipulation, are contestable. Negrotti v. Negrotti, 98 N.J. 428, 432 (1985). As a general rule, "litigants should be held to their stipulations and the consequences thereof." Ibid.

Furthermore, a movant is entitled to a plenary hearing only where he clearly demonstrates the existence of a genuine issue of material fact entitling the party to relief through competent supporting documents and affidavits. Lepis, supra, 83 N.J. at 159; Eaton v. Grau, 368 N.J. Super. 215, 222 (App. Div. 2004).

Motions to reopen or set aside a judgment are governed by Rule 4:50-1, which provides:

> the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

"As a general matter, judgments and orders in family actions are covered by this rule." Pressler & Verniero, Current N.J. Court Rules, comment 6.1 on R. 4:50-1 (2017). "Regardless of the basis, vacation of a judgment under Rule 4:50-1 should be granted sparingly." In re Guardianship of J.N.H., 172 N.J. 440, 473-74 (2002).

Relief under R. 4:50-1(f) "is available only when truly exceptional circumstances are present and only when the court is presented with a reason not included among any of the reasons subject to the one year limitation." Baumann v. Marinaro, 95 N.J. 380, 395 (1984). "Whether exceptional circumstances exist is determined on a case-by-case basis according to the specific facts presented." J.N.H., supra, 172 N.J. at 474. The movant must demonstrate that continued enforcement of the judgment would be "unjust, oppressive or inequitable." Quagliato v. Bodner, 115 N.J. Super. 133, 138 (App. Div. 1971). Plaintiff has not met this burden.

Rule 4:50-1 motions "shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken." R. 4:50-2. In Rogan Equities, Inc. v. Santini, 289 N.J. Super. 95, 112-13 (App. Div.), certif. denied, 145 N.J. 375 (1996), the defendant sought to attack a final judgment of foreclosure on the

ground that she had not been properly served. However, the defendant had actual knowledge of the action but delayed more than two years before asserting that the judgment and the ensuing sheriff's sale were void. Ibid. The trial court held that the defendant's motion to set aside the judgment had not been made within a reasonable time, as required by R. 4:50-2. Id. at 113. We affirmed the ruling, holding "in some circumstances a motion to vacate a void judgment can properly be denied as untimely." Id. at 114. See also Last v. Audubon Park Assocs., 227 N.J. Super. 602, 607-08 (App. Div. 1988), certif. denied, 114 N.J. 491 (1989) (rejecting a mortgagee's attempt to void a foreclosure judgment that had been delayed for two years despite having knowledge of the judgment).

Plaintiff was aware of the facts and circumstances upon which he relies in support of his motion at the time they occurred in 2012. He was aware of his treatment by the trial judge, his arrest, his appearance in court for a portion of the trial and the negotiation of the MSA while in handcuffs, and his income level. The financial information and records needed to prove his actual income level or an appropriate imputed income, and to value his business, were readily available to him during the pendency of the divorce. Despite these circumstances, plaintiff offers no explanation or excuse for filing his motion more than twenty-six

months after executing the MSA and the entry of the final judgment of divorce. By any measure, plaintiff did not file his motion within a reasonable time. Consequently, his application is time-barred. R. 4:50-2.

We discern no abuse of discretion by Judge Rafano in ruling on plaintiff's motion without a plenary hearing and in denying the motion as both time-barred and without merit. See Eaton, supra, 368 N.J. Super. at 222 (noting that a "trial judge's decision whether to allow or deny such relief on one of the six specified grounds in Rule 4:50-1 should be left undisturbed unless it results from a clear abuse of discretion"); see also Schwartzman v. Schwartzman, 248 N.J. Super. 73, 77-78 (App. Div.), certif. denied, 126 N.J. 341 (1991).

The divorce proceeding was fully contested, with extensive pretrial motion practice and two days of trial before the settlement was reached. Both parties were represented by experienced counsel throughout the proceedings. Plaintiff is a highly educated, sophisticated businessman who owns an information technology company. He was financially capable of retaining a forensic accountant while the divorce action was pending. As noted by Judge Rafano:

> He could have hired an expert, provided that expert with all of the necessary information to prepare a report, and presented the

> expert's valuation in Court or used the expert's valuation as a base for negotiations with the Defendant. Instead, despite having clear warning that the Defendant intended to hire an expert, the Plaintiff made a tactical decision to call his accountant instead. He cannot now decide that he would like to go back and litigate his case in a different fashion because he is unhappy with the results.

Plaintiff was not ill or under the influence of intoxicants during the trial or the negotiation of the settlement agreement. Defendant did not conceal or fraudulently transfer marital assets. Nor did she fail to disclose her income.

Defendant did not subject plaintiff to duress, coercion or threats. As further noted by Judge Rafano:

> The Defendant had no say in whether a warrant was issued for Defendant's arrest and no control over whether he was released. If, after consulting with counsel, the Plaintiff had felt he was unable to proceed or felt that his incarceration was preventing him from thinking calmly and clearly about the situation, he could have requested an adjournment of the trial until he was released. However, the transcripts do not indicate that such a request was made. In fact, both parties agree that the Plaintiff instead called a friend to come to the court to help him evaluate the settlement proposals and that he spent several hours, with the benefit of the advice of his friend and counsel negotiating the terms of the Marital Settlement Agreement.

In addition, several other factors militate strongly against plaintiff's position. Plaintiff did not seek an adjournment of

the trial on the day he was arrested or the following day when the MSA was negotiated and agreed upon. He does not claim that his counsel was ineffective. He waited more than twenty-six months to file his motion to set aside the MSA. He offers no explanation or excuse for the delay. Plaintiff is bound by his imputed income stipulation. Negrotti, supra, 98 N.J. at 432.

Moreover, both plaintiff and defendant filed post-judgment motions to enforce various aspects of the MSA during the intervening two years. As also noted by the motion judge:

> The Plaintiff cannot pick and choose which portions of the Agreement he wishes to follow and to have the Court hold the Defendant responsible for, while arguing that his financial responsibilities should be abated because his incarceration made it impossible for him to consent to the Agreement freely. In addition it is disingenuous for the Plaintiff to abide by and seek to enforce the terms of the parties' Marital Settlement Agreement for the almost two and a half years since the parties' divorce and then return to Court seeking to have a portion of the Agreement vacated because he has decided to now present evidence that was available to him at the time of the trial.

"It is well recognized that a litigant who accepts the benefits of a judgment is estopped from attacking it on appeal." Tassie v. Tassie, 140 N.J. Super. 517, 524 (App. Div. 1976). The rule is but a corollary to the established principle that any act of a litigant "by which he expressly or impliedly recognizes the

validity of a judgment operates as a waiver or surrender of his right to appeal therefrom." Id. at 525. Plaintiff benefitted from various aspects of the MSA incorporated into the final judgment of divorce during the years following its entry. He filed motions to enforce the terms of the MSA.

Plaintiff was represented by an experienced attorney in the negotiation of the settlement agreement as well as advised by an accountant. He understood the terms of the agreement. There are no substantiated allegations of fraud, unconscionablity or overreaching in the negotiations of the MSA. Given the absence of such circumstances, we agree with the motion judge that there is no legal or equitable basis to set aside the parties' settlement agreement. See Miller, supra, 160 N.J. at 419. Judge Rafano correctly denied plaintiff's motion without conducting a plenary hearing.

Although we decline to set aside the MSA, we must nonetheless determine whether plaintiff made a sufficient showing to warrant a plenary hearing before deciding his application to reduce his child support obligation based on changed circumstances. Support provisions contained in settlement agreements or judicial orders are subject to the same standard of judicial modification based on substantially changed circumstances. See generally Lepis, supra, 83 N.J. 147-48; Smith, supra, 72 N.J. at 360.

> An increase in support becomes necessary whenever changed circumstances substantially impair the dependent spouse's ability to maintain the standard of living reflected in the original decree or agreement. Conversely, a decrease is called for when circumstances render all or a portion of support received unnecessary for maintaining that standard.
>
> [Lepis, supra, 83 N.J. at 152-53.]

Plaintiff contends that he made out a prima facie case for a reduction in his support obligations. He argues that his motion should not have been decided based on conflicting affidavits without a plenary hearing.

Judge Rafano determined that plaintiff failed to make a prima facie showing of changed circumstances sufficient to warrant a modification of the support obligations imposed by the MSA. He further determined that a plenary hearing was not necessary. The judge explained:

> Although the Plaintiff briefly states that "the IT business is not what it used to be just a few years ago and many of my former clients have outsourced their business" he does not substantiate these claims and seems to rest the remainder of his certification and his attorney's legal arguments on the idea that the Court should reevaluate his financial circumstances as they existed at the time of the divorce. Therefore, since he bases his motion on events that existed at the time of the parties' divorce, he has not shown a change in circumstances and therefore has not sufficiently demonstrated to the Court that a plenary hearing is necessary to resolve a dispute of material facts.

We agree. Plaintiff did not make a prima facie showing of changed circumstances following the entry of the final judgment of divorce. A plenary hearing was not required.

The trial judge's and the motion judge's findings are amply supported by the record. The denial of plaintiff's motion without conducting a plenary hearing was appropriate.

Affirmed.