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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-4996-14T4
A-2347-15T4

KARL LAVIN,

Plaintiff-Appellant,

v.

MARY KAY LAVIN,

Defendant-Respondent.

Argued October 25, 2017 — Decided December 1, 2017

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth
County, Docket No. FM-13-0824-07.

Mark S. Guralnick argued the cause for
appellant (Mr. Guralnick, attorney; Stephen M.
Pascarella, on the briefs).

Sylvia S. Costantino argued the cause for
respondent.

PER CURIAM

In this matrimonial matter, plaintiff Karl Lavin appeals two orders, contending that the Family Part judge erred in denying his request to terminate his alimony obligation and in assessing counsel fees against him.¹ After a review of the record and applicable principles of law, we affirm.

The parties were divorced in 2007. The Property Settlement Agreement required plaintiff to pay defendant Mary Kay Lavin alimony of \$1250 per month.

In September 2013, plaintiff filed the first of several motions to terminate his alimony obligation. In denying the motion in January 2014, the family judge noted that the application was deficient in its failure to include supporting financial documentation. Plaintiff appealed and requested the trial judge stay her order. The judge denied the motion to stay and granted counsel fees to defendant. Plaintiff later withdrew his appeal.

Plaintiff filed a second motion to terminate alimony in December 2014. Judge Kathleen A. Sheedy² denied the motion and granted defendant's cross-motion for counsel fees in an order and written decision on February 20, 2015. The judge noted the

¹ We have consolidated the appeals for the purposes of this opinion.

² Judge Sheedy was not the judge who decided the September 2013 motion.

procedural deficiencies in the application, which lacked numerous required documents, such as the prior case information statements (CIS), current tax returns, W2s, or any paystubs. Judge Sheedy observed that without these financial documents, she could not compare plaintiff's "current financial status with his financial position at the time of the divorce." Although plaintiff also asserted a worsening medical condition in support of his application, the judge noted that he had also failed to provide any medical documentation to support that claim. She, therefore, concluded that plaintiff had failed "to present a prima facie showing of changed circumstances that would warrant a modification of his alimony."

Defendant's cross-motion seeking counsel fees was granted.

Judge Sheedy stated:

[Plaintiff] has brought deficient applications before and has been warned that future deficient requests will be denied. [Defendant] has had to respond to [plaintiff's] similar motions in the past and is again faced with opposing the exact same application that was denied in January 2014. This [c]ourt finds that [plaintiff] has brought this application in bad faith for failing to provide documents that he was told he must file.

She awarded counsel fees in the amount of \$1750.

Plaintiff moved for reconsideration of the counsel fee award. In response, defendant requested that the court enforce the two

prior awards of counsel fees and grant fees on the reconsideration application. In a written decision and order issued on May 8, 2015, Judge Sheedy denied the motion for reconsideration, finding that no new information had been provided to demonstrate that the matter had been improperly decided. She determined that the application lacked merit and had not been brought in good faith. She, therefore, awarded an additional \$750 in counsel fees to defendant. The total outstanding counsel fees from the previous motions was \$4375.

Judge Sheedy denied plaintiff's subsequent motion for a stay and imposed a sanction of \$100 per day for each day that plaintiff failed to comply with the previous orders requiring him to pay counsel fees. Plaintiff appealed from the May 8, 2015 order.

In September 2015, while the appeal was pending, plaintiff filed a third motion for termination of alimony. Judge Sheedy denied the motion on December 11, 2015. In her written decision, she noted the recurrent deficiencies in the application, and plaintiff's continuing failure to include tax returns, W2s and paystubs. Despite these shortcomings, the judge undertook a substantive review of the motion and found that plaintiff had failed to provide adequate proof to support a termination or modification of his alimony obligation. The CIS revealed plaintiff had far superior financial assets than defendant. There was no

support for plaintiff's assertion that he was "being pressured" to retire nor was there any documentation of his alleged worsening medical condition.

Judge Sheedy granted defendant's motion to enforce the prior orders and awarded counsel fees of \$2000. She stated: "[Plaintiff] was advised many times . . . that he had not provided sufficient financial and medical documentation, and therefore knew that filing the same information would most likely yield the same results. [Plaintiff] however, files an identical application without providing the necessary documentation required by the [c]ourt." Plaintiff filed an appeal from the December 2015 order.

In these appeals, plaintiff argues that the Family Part judge abused her discretion in finding he failed to make a prima facie showing of changed circumstances sufficient to require termination or modification of alimony, and in awarding defendant counsel fees. We disagree.

We are mindful that our scope of review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). Family Part judges have broad discretion when considering an application to modify or terminate alimony. Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006) (citing Martindell v. Martindell, 21 N.J. 341, 355 (1956)). We owe substantial deference to these types of decisions. Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App.

Div. 2009). Thus, an alimony determination will not be overturned on appeal absent an abuse of discretion. See Rolnick v. Rolnick, 262 N.J. Super. 343, 360 (App. Div. 1993) (holding that in order to vacate a trial court's findings as to modification of alimony, "an appellate court must conclude that the trial court clearly abused its discretion").

Similarly, "fee determinations by trial courts will be disturbed only on the rarest occasions, and then only because of a clear abuse of discretion." Rendine v. Pantzer, 141 N.J. 292, 317 (1995).


After reviewing the record, we conclude that Judge Sheedy's factual findings are fully supported by the record and, in light of those facts, her legal conclusions are unassailable. We therefore affirm, substantially for the reasons expressed in her several well-reasoned opinions. We add the following brief comments.

All of plaintiff's applications lacked support for his request to terminate or even modify his alimony obligation. Although apprised by the court of the deficiencies, plaintiff nevertheless filed several identical defective applications. There was no demonstration of any changed circumstances warranting a modification or termination of the alimony obligation.

The fees awarded to defendant are a miniscule fraction of what she has paid her counsel to defend plaintiff's deficient applications. Judge Sheedy did not abuse her discretion in the enforcement of prior orders or awarding additional fees to defendant in the May and December 2015 orders.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION