SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5713-14T4
A-5297-15T4

SAMAR A. SOUFANATI,

Plaintiff-Respondent/
Cross-Appellant,

v.

ABELHAMID S. SOUFANATI,

Defendant-Appellant/
Cross-Respondent.

SAMAR A. SOUFANATI,

Plaintiff-Respondent,

v.

ABELHAMID S. SOUFANATI,

Defendant-Appellant.

Argued (A-5713-14) and Submitted (A-5297-15)
August 15, 2017 – Decided October 6, 2017

Before Judges Messano and Sumners.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FM-16-0748-12.

Santo J. Bonanno argued the cause for appellant/cross-respondent in A-5713-14 (Mr. Bonanno, on the briefs in A-5713-14 and A-5297-15).

Kevin B. Kelly argued the cause for respondent/cross-appellant in A-5713-14 (Seton Hall University School of Law Center for Social Justice, attorneys; Mr. Kelly, of counsel and on the brief).

Respondent has not filed a brief in A-5297-15.

PER CURIAM

We calendared these appeals back-to-back and now consolidate them to issue a single opinion. Plaintiff Samar A. Soufanati and defendant Abelhamid S. Soufanati married in 1999 and had three children born in 2001, 2003 and 2005. Following trial in November 2012, the Family Part entered a final judgment of divorce (JOD) awarding defendant custody of the three children, ordering plaintiff to pay $40 per week in child support for all three children and ordering defendant to pay plaintiff $300 per week in rehabilitative alimony for three years.

Post-judgment motion practice began almost immediately, resulting in the denial of defendant's motion to terminate alimony based on an alleged change in circumstances. We affirmed the trial court's orders on appeal in an unpublished opinion. Soufanati v. Soufanati, No. A-3988-12 (App. Div. Apr. 8, 2014).

In July 2014, defendant again moved to terminate alimony and to increase child support. Plaintiff cross-moved, seeking primary residential custody of her two youngest children, enforcement of defendant's alimony obligations and recalculation of child support pursuant to the Child Support Guidelines (the Guidelines). The judge's September 30, 2014 orders reduced defendant's alimony obligations to $75 per week, plus $35 per week toward arrears, increased child support to $175, and ordered a plenary hearing on custody.[1] In the court's December 2014 order on plaintiff's motion for reconsideration, the judge ordered a plenary hearing on "alimony, child support, parenting time and custody." The hearing took place in February and April 2015.

In his June 5, 2015 order (the June 2015 order) that accompanied his written decision, the judge summarized the testimony of plaintiff, defendant, defendant's employer and two social workers who counseled the children.[2] He found "[n]othing of any significance ha[d] changed" since entry of the JOD. The judge noted that plaintiff had "improved her economic picture by completing her education, receiving her de[g]ree and getting a job," but that this was not "dispositive of the issue of custody."

[1] One of the orders increased child support, the other postponed a decision until after the plenary hearing.

[2] Defendant has not provided transcripts of the hearing.

The judge noted plaintiff's relationship with her eldest daughter was "a very difficult project, in progress." He found that both plaintiff and defendant "express[ed] great reluctance at splitting the children up [with] the two younger ones coming [to live] with plaintiff and [the eldest] staying with the defendant." He denied plaintiff's motion for a change of residential custody and ordered child support of $161 per week in accordance with the Guidelines' sole parenting worksheet.

Both parties moved for reconsideration. Plaintiff argued the judge failed to address other issues in dispute at the plenary hearing, including the September 2014 reduction of defendant's alimony obligations and which party could claim the children as tax exemptions. Defendant opposed the motion, arguing it was untimely. He also cross-moved seeking an adjustment of the parenting time schedule, clarification as to whether his alimony obligation has "ended as plaintiff no longer need[ed] rehabilitation" and recalculation of child support as a result.

At oral argument on the motions, the judge acknowledged an error in his previous calculations under the Guidelines. Recognizing the parties alternated year to year as to the number of children claimed as dependents, the judge generated two worksheets and averaged the child support obligation. The judge stated he reduced defendant's alimony obligation because plaintiff

had made significant progress in her education and employment, and he rejected her request to "extend the term." He filed two orders on July 24, 2015 (the July 2015 orders), which we review in A-5713-14 and plaintiff's cross-appeal. The orders continued defendant's alimony obligation at $75 per week, ordered plaintiff to pay child support of $138 per week and denied defendant's request to have alternating weekend parenting time.

Initially, we emphasize that only the July 2015 orders are before us. See R. 2:4-1 (requiring appeals from final judgments be taken within forty-five days of their entry). "[T]he timely filing and service of a motion . . . for rehearing or reconsideration . . . pursuant to R. 4:49-2" tolls the running of the 45-day limit. R. 2:4-3(e). Here, however, plaintiff's motion for reconsideration was filed no earlier than June 29, 2015, twenty-four days after the judge's order that followed the plenary hearing, and defendant's opposition and cross-motion was seemingly filed on July 6, 2015, thirty days after the order following the hearing was filed.

The judge decided the motions for reconsideration on July 24, 2015. Defendant's appeal was not filed until August 17, 2015, twenty-four days later. As a result, any appeal from the earlier June 2015 order is untimely. Additionally, defendant's notice of appeal only lists the July 24, 2015 order. See Fusco v. Bd. of

Educ. of City of Newark, 349 N.J. Super. 455, 461-62 (App. Div.) (citations omitted), certif. denied, 174 N.J. 544 (2002) (only orders listed in the notice of appeal are subject to review).

Defendant argues the judge should have terminated alimony earlier because plaintiff no longer needed rehabilitative alimony. In her cross-appeal, plaintiff argues that the judge erred in reducing the alimony award.

"Rehabilitative alimony is a short-term award for the purpose of financially supporting a spouse while he or she prepares to reenter the workforce through training or education." Gnall v. Gnall, 222 N.J. 414, 431 (2015) (citing Lepis v. Lepis, 83 N.J. 139, 162 (1980)). N.J.S.A. 2A:34-23(b)(d) requires the court to consider a number of factors in setting any alimony award or in modifying an existing award, including modification of an award of rehabilitative alimony. See Crews v. Crews, 164 N.J. 11, 34 (2000).

Regarding the issue of alimony, we do not treat the July 2015 orders as decisions made on reconsideration. It is clear from the record that the judge ordered a plenary hearing to resolve the alimony dispute. In his written decision following the hearing, the judge cited the testimony of plaintiff and defendant regarding their current financial circumstances. At the time, an interim order had reduced defendant's alimony payments to $75 per week.

Following the hearing, the judge left this figure unchanged, although his June 2015 order made no mention of alimony.

In her motion for reconsideration, plaintiff again objected to the reduction but furnished no new information. Defendant's certification merely asked the court for "clarification of whether or not [his] alimony [obligation was] ended."

As already noted, defendant failed to furnish any transcripts from the plenary hearing. In response to a motion by plaintiff objecting to the continued prosecution of this appeal, a panel of our colleagues entered an order on January 26, 2016, that provided for dismissal of the appeal if the merits panel determined "transcripts [were] necessary for [our] review." We conclude transcripts of the plenary hearing are necessary to consider this aspect of the appeal and plaintiff's cross-appeal. Simply put, without the transcripts of the plenary hearing, we are in no position to assess whether the judge's decision to modify the alimony award was a reasonable exercise of discretion based upon consideration of the appropriate statutory factors. We affirm the July 2015 orders regarding defendant's alimony obligations.[3]

Defendant next contends it was error not to grant him alternate weekend parenting time. Under prior orders, plaintiff

[3] Defendant's alimony obligations ceased in fall 2015.

was awarded weekend parenting time with the two youngest children because at that time defendant worked every weekend. In his written decision following the plenary hearing, the judge did not expressly address the issue, except to find that the two children "enjoy[ed] the time they spend with their mother," and "loved their father very much as well." The June 2015 order denied plaintiff's motion for a change in custody of the two children but did not address any modification of defendant's parenting time.

We gather from the judge's written decision, in which he summarized the counselors' testimony, that he was unpersuaded defendant's lack of weekend visitation was negatively affecting any of the children. In the certification supporting his cross-motion for reconsideration, defendant argued his eldest daughter missed spending weekend time with her two siblings and that changes in his employment routine warranted a change in weekend parenting time. He presented nothing further to support these claims.

Reconsideration is left to the sound discretion of the court and "is not appropriate merely because a litigant is dissatisfied with a decision . . . or wishes to reargue a motion." Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Reconsideration is warranted when the court "expressed its decision based upon a palpably incorrect or irrational basis."

Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

Where a prior court order exists specifying the terms of residential custody and parenting time, as was the case here, a parent seeking to alter those terms has the burden of demonstrating changed circumstances that have affected the children and would justify such alteration. Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). We cannot conclude the judge, who actually heard the testimony of the parties and the treating counsellors, erred in denying any modification, and he certainly did not abuse his discretion by refusing to reconsider the decision in light of the lack of any additional evidence offered by defendant.

Lastly, defendant contends the judge based his child support award upon the erroneous factual finding that the parties' oldest daughter, who is estranged from plaintiff, is a "visiting child" for purposes of calculating the Guidelines. Plaintiff's motion for reconsideration specifically argued the judge had applied the wrong worksheet, i.e., the sole parenting worksheet, for calculating support from the Guidelines following the plenary hearing. Defendant's certification did not challenge the child support award of $175 in the June 2015 order.

At oral argument on the reconsideration motions, the judge immediately recognized his earlier error, recalculated the

guidelines and directed his staff to make copies and circulate them. The judge credited plaintiff with 104 overnights, i.e., every weekend night for the entire year, and did not differentiate between the two youngest children and the parties' oldest daughter who never spent an overnight with plaintiff. However, defendant never objected to the Guidelines worksheet at the hearing even though it resulted in a reduction of plaintiff's child support payments as she had requested.

"The trial court has substantial discretion in making a child support award. . . . If consistent with the law, such an award 'will not be disturbed unless it is "manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice."'" Foust v. Glaser, 340 N.J. Super. 312, 315-16 (App. Div. 2001) (citations omitted) (quoting Raynor v. Raynor, 319 N.J. Super. 591, 605 (App. Div. 1999)). Child support awards, including modifications, shall be made in accordance with the Guidelines and supplemented with consideration of the statutory factors contained in N.J.S.A. 2A:34-23. Pascale v. Pascale, 140 N.J. 583, 593 (1995). However, "'[t]he key to both the [G]uidelines and the statutory factors is flexibility and the best interest of children.'" Caplan v. Caplan, 182 N.J. 250, 266 (2005) (first alteration in original) (quoting Pascale, supra, 140 N.J. at 594).

On appeal, defendant offers a three-sentence argument that the judge erred by not differentiating between the eldest daughter and the other two children on the shared parenting Guidelines worksheet. He fails to explain what the proper calculation should have been, except to say that he would have received a larger award. "We will not consider mere conclusory statements by the brief writer." Freeman v. State, 347 N.J. Super. 11, 32 (App. Div. 2002) (citing Miller v. Reis, 189 N.J. Super. 437, 441 (App. Div. 1983)). Nor will we determine based on this argument that the judge's decision was necessarily a mistaken exercise of discretion.

In sum, we affirm the July 2015 orders that are the subject of A-5713-14 and plaintiff's cross-appeal.

Defendant's appeal in A-5297-15 arises from events that occurred approximately one year later, in July 2016. Plaintiff moved for a temporary change in custody of the parties' younger daughter, enforcement of prior orders compelling defendant to cooperate with counsellors and payment of defendant's share of camp expenses for the two youngest children. Defendant cross-moved seeking reimbursement of expenses for the children's extracurricular activities, recalculation of child support and counsel fees.

Defendant's certification cited specific examples of extra-curricular expenses for the three children and requested plaintiff contribute 50%, or $381. Defendant's certification provided no information regarding his current income and only asked the judge to order plaintiff to bring her latest pay stubs to court because she refused to provide them voluntarily.

After considering oral argument, the judge observed that defendant had not "shown . . . anything to lead [the judge] to recalculate child support, at this point." The judge found defendant failed to demonstrate "a change in circumstances . . . in any way." He denied defendant's request for reimbursement of extra-curricular expenses, concluding they were "included in child support" in accordance with the Guidelines. The judge denied counsel fees to both parties.

Defendant argues the judge erred in not recalculating child support, not awarding reimbursement of extra-curricular activities, yet awarding plaintiff reimbursement for camp expenses, and not awarding counsel fees.[4] These arguments lack

[4] Defendant's brief includes information obtained from plaintiff after entry of the July 2016 order under review. Defendant never sought leave to supplement the record and we do not consider this information submitted in violation of the Rules. Moreover, defendant failed to cite a single legal authority in his brief, and, although each argument was framed with an appropriate point heading, the entire argument for all three points raised is less than two pages and contains nothing but conclusory statements.

sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in A-5297-15.