SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0653-16T2

PAMELA DENNIS,

Plaintiff-Respondent,

v.

JOHN ROBERTSON,

Defendant-Appellant.

Submitted November 13, 2017 – Decided January 18, 2018

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FD-02-1621-01.

John Robertson, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant John Robertson appeals from an August 19, 2016 order of the Family Part requiring him to contribute to his son's college tuition costs. Because the judge relied on an incorrect

assessment of defendant's income, we affirm in part, and reverse and remand in part.

I.

We discern the following relevant facts from the record. Plaintiff Pamela Dennis and defendant were never married, but lived together in New York City, and had a son born in November 1997. At some point, the parties became estranged, and plaintiff obtained child support in New York. Eventually, plaintiff moved to New Jersey. In 2001, defendant sought to register the New York child support order in New Jersey, modify the support, and establish a visitation schedule. The judge maintained the New York order, setting payment at $230 per week through income withholding, but relisted the modification motion, requiring the parties to provide financial information and case information statements.

In 2004, the court denied defendant's application for a downward modification of child support, and denied plaintiff's application for an upward modification of child support. Further, the Family Part judge ordered the parties to attend parenting time mediation, and to set up a visitation schedule for defendant to be with his son.

On September 3, 2008, the parties entered into a consent order agreeing to a detailed visitation schedule. Plaintiff had

residential and physical custody but both parties agreed to consult with each other on all matters, including education. In 2010, while picking his son up for their scheduled visit, the child ran away from defendant, telling defendant that plaintiff "made him do it". In March 2010, the Family Part entered an order requiring the parties to comply with the September 3, 2008 consent order. The compendium of subsequent motions and orders in defendant's appendix suggest compliance with the visitation schedule was never fully realized and is the apparent basis for defendant's assertion that he has no relationship with his son.[1]

In September 2012, defendant filed a motion asking the court, among other things, to compel plaintiff to provide information regarding the child's education and to compel plaintiff's compliance with the 2008 consent order. According to defendant, his son had been transferred to a private high school, from which defendant began to receive periodic progress reports and letters. In November 2012, plaintiff filed an application to increase child support, and the court set the new level of child support at $377 per month with arrears of $108.33 for a total of $485.33 per month.

[1] Defendant's appeal is unopposed and the full history of litigation between plaintiff and defendant has not been presented for our review. We draw no conclusions beyond what is presented in the record supplied to us.

In March 2016, defendant wrote a letter to plaintiff and to his son inquiring about whether he planned on continuing his education, working, or joining the military. Receiving no response, defendant moved to determine whether the child should be emancipated. In response, plaintiff moved to compel defendant to contribute towards the child's college costs, as he would be enrolling in college in Massachusetts.

In May 2016, the parties appeared before the Family Part judge to address these motions. The court emphasized the parties needed to establish their financial circumstances through proofs, the child had to fully explore and pursue all scholarship and loan options and needed to contribute as much as he could towards his costs. Further, the judge considered the depth of the relationship between defendant and his son. She ordered defendant to inquire about obtaining an Amtrak pass[2] for the child and for the parties to exchange discovery. In August 2016, a different Family Part judge entered an order instructing the parties to bring their financial documents to the next hearing. Plaintiff was ordered to provide defendant with all information pertaining to the child's college application. Furthermore, the parties were ordered to agree on a date and time during which defendant could discuss with

[2] Defendant had been employed by Amtrak, and reportedly could obtain this pass at no cost.

the child the parameters for the Amtrak pass, which defendant was to obtain before the end of September.

On August 16, 2016, the parties brought to court what was characterized as "all their financial documents . . . including but not limited to their W-2s, [i]ncome [t]ax [r]eturns, and other documents evidencing income." Defendant is retired and receives a monthly lump sum comprised of his disability and pension payments. He provided his 1099 and 1099-R from 2015, which showed an income of $40,940.16, and at that time, he had not filed 2015 tax returns. Defendant also provided an affidavit showing an income of $40,940.16, and a letter from the Railroad Retirement Board evidencing a monthly income of $3,411.68. Plaintiff is a teacher, employed by the New York City School System, making approximately $94,962.86 a year.

On August 19, 2016, the Family Part judge issued an order and provided reasons on the record. He recognized, "[n]o case information statements were filed by either party despite being so ordered by the Court[.]" He found plaintiff "articulate and forthright," and it was obvious she "loves and is passionate about her son," and found defendant "lack[ed] . . . credibility and was somewhat disingenuous with his testimony that his son has been alienated from him . . . by plaintiff." The judge held

emancipation was not appropriate since the child would be attending college.

The judge utilized the factors established in Newburgh v. Arrigo, 88 N.J. 529, 545 (1982), to determine the level of support owed by defendant. The judge rejected defendant's argument that the child was so alienated from him that he should not be required to contribute to college costs. The judge stated,

> despite no case information statements being submitted by the parties, they have submitted calculations of their monthly expenses with plaintiff mother of $2,239 and defendant father $3,348.83. The parties have also submitted their recent income information that reveals that plaintiff mother has a yearly income of approximately $94,962.86 . . . and defendant father has a yearly income of approximately $65,378.59.

Based on these earnings and the child's agreement to pay one third of the college costs, the court found that after the child paid his third, defendant would be responsible for forty percent of the remaining costs and plaintiff would be responsible for the remaining sixty percent. Therefore, the court ordered defendant to contribute $6,267 and provide an Amtrak pass.[3] The court

[3] The trial judge's oral opinion states that plaintiff will be responsible for $9,400, and the child for $7,833.33. However, the order only sets out defendant's responsibility to pay his share, $6,267.

thereafter recalculated defendant's child support obligation to $363.33 monthly. This appeal followed.

II.

Defendant argues the trial court erred in deciding he had a responsibility under Gac v. Gac, 186 N.J. 535 (2006), to contribute towards his son's college expenses. We discern no error in the court's determination that defendant is required to contribute, but agree with defendant's argument that the trial court miscalculated the amount of contribution owed.

We have "have a strictly limited standard of review from the fact-findings of the Family Part judge." N.J. Div. of Youth & Family Servs. v. I.H.C., 415 N.J. Super. 551, 577-78 (App. Div. 2010) (citation omitted). "[A]ppellate courts 'defer to the factual findings of the trial court because it has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; it has a feel of the case that can never be realized by a review of the cold record.'" N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 342-43 (2010) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). Furthermore, deference is appropriate "[b]ecause of the family courts' special jurisdiction and expertise in family matters[.]" Cesare v. Cesare, 154 N.J. 394, 413 (1998). However, where the findings of the trial court "went so wide of the mark

that the judge was clearly mistaken," this court will reverse. N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007) (citation omitted).

To determine whether a parent should be required to contribute to college costs, and how much should be contributed, a trial court must balance the statutory criteria of N.J.S.A. 2A:34-23(a) and the Newburgh factors, as well as any other relevant circumstances. Gac, 186 N.J. at 543. These factors include:

> (1) whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education; (2) the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education; (3) the amount of the contribution sought by the child for the cost of higher education; (4) the ability of the parent to pay that cost; (5) the relationship of the requested contribution to the kind of school or course of study sought by the child; (6) the financial resources of both parents; (7) the commitment to and aptitude of the child for the requested education; (8) the financial resources of the child . . .; (9) the ability of the child to earn income during the school year or on vacation; (10) the availability of financial aid in the form of college grants and loans; (11) the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance; and (12) the relationship of the education requested to any prior training and to the overall long-range goals of the child.
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> [Newburgh, 88 N.J. at 545; Gac, 186 N.J. at 543.]

Defendant argues because he did not have a relationship with his son, the trial court erred by requiring him to contribute towards the college expenses. We do not consider the trial judge's findings under the Newburgh factors "so wide of the mark that the judge was clearly mistaken." G.L., 191 N.J. at 605. In particular, the court here found that defendant contributed towards the lack of relationship:

> it is clear to this [c]ourt, defendant . . . has not made the effort and it is quite telling from his most recent lack of effort by the defendant to see his son who was waiting for him on two occasions . . . and he failed to follow up on taking him to accepted students weekend as offered or suggested by the [c]ourt.

Therefore, he should not be able to claim alienation as a justification for not contributing to college costs. Additionally, even if alienation was present, "[a] relationship between a non-custodial parent and a child is not required for the custodial parent or the child to ask the noncustodial parent for financial assistance to defray college expenses." Gac, 186 N.J. at 546.

Regarding the financial status of the parties, the court found, "[t]he parties have . . . submitted their recent income information that reveals that plaintiff mother has a yearly income

of approximately $94,962.86 . . . and defendant father has a yearly income of approximately $65,378.59[.]"

However, the parties did not submit case information statements, as required by Rule 5:5-4, despite requests by the court. We have previously stated the mandate requiring case information statements "is not just window dressing. On the contrary, it is a way for the trial judge to get a complete picture of the finances of the movants[.]" Palombi v. Palombi, 414 N.J. Super. 274, 287 (App. Div. 2010) (quoting Gulya v. Gulya, 251 N.J. Super. 250, 253-54 (App. Div. 1991)). Here, the trial court reached its financial determinations by reviewing defendant's 1099 and 1099-R, and plaintiff's pay stubs. These documents, although certainly relevant, were insufficient to "present[] an adequate factual basis for the court to assess essential facts necessary to a determination of the issues presented." Id. at 288.

Illustrating this point, the court misinterpreted defendant's 1099 and 1099-R, and attributed to him an additional $24,438.43 in yearly income.[4] This materially erroneous finding warrants reversal.

[4] The court looked at these documents, added boxes 3 on both, and calculated the amount paid to defendant, coming to a total of $65,378.59. However, based on instructions provided by the Railroad Retirement Board, the correct boxes are 3 and 7, respectively, which provides a total income of $40,940.16, thus

The resulting calculated contributions -- $363.33 in monthly child support and $6,267 in college costs -- result in a yearly obligation of $10,626.96, approximately twenty-six percent of defendant's apparent $40.940.16 yearly income. Given plaintiff reported a yearly income of approximately $94,962.86, her income more than doubles that of defendant's. These discrepancies warrant a second look at the apportionment of the parents' responsibility for the college costs as well as support.

As we sustain the portion of the trial court's ruling finding defendant was not exempt from contributing to his son's college costs, defendant's court-ordered college contribution shall remain provisionally in place, subject to appropriate credits or retroactive adjustments after the trial court completes its post-remand analysis.

All additional arguments introduced by defendant are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed and remanded in part. At a further hearing on this matter, the courts shall require the parties to

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agreeing with defendant's affidavit. See Explanation of Form RRB 1099 Tax Statement, U.S. Railroad Ret. Bd., https://www.rrb.gov/Benefits/TXL-1099; see also Explanation of Form RRB 1099-R Tax Statement, U.S. Railroad Ret. Bd., https://www.rrb.gov/node/1412.

provide current case information statements, as required under Rule 5:5-4, and any other pertinent updated information. We do not retain jurisdiction.