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APPROVAL OF THE APPELLATE DIVISION**

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 NO. A-1103-16T2

D.A.L.,

Plaintiff-Appellant,

v.

W.J.L.,

Defendant-Respondent.

Argued April 24, 2018 – Decided May 3, 2018

Before Judge Reisner, Hoffman and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket No. FM-14-0316-12.

Michael Patrick Carroll argued the cause for
appellant (D.A.L., on the pro se brief).

Elizabeth Szabo argued the cause for
respondent (Legal Services of Northwest
Jersey, Inc., attorneys; Elizabeth Szabo, on
the brief).

PER CURIAM

In this dissolution matter, plaintiff appeals from the
judgment of divorce (JOD) entered by the Family Part on February

29, 2016, and an October 24, 2016 order denying her motion for reconsideration. We affirm.

I

Plaintiff and defendant married in 2001, and have two children, a daughter born in 2002, and a son born in 2004. Plaintiff holds a Bachelor of Science degree in engineering, and worked as an engineer throughout the marriage. At the time of trial, she earned \$129,000 annually.

A high-school graduate, defendant opened his own construction firm in 1996, and remained self-employed as a carpenter throughout the marriage. In 2002, defendant contracted Lyme disease. Subsequently, he filed a claim for disability benefits with the Social Security Administration (SSA), and began receiving benefits in 2009, retroactive to 2007. In 2014, the SSA determined defendant remained disabled. In August 2015, defendant underwent cardiac surgery for a genetic heart condition. Defendant receives \$1250 per month in disability benefits. Plaintiff, on behalf of her children, receives \$320 per month per child attributable to defendant's disability.

In the summer of 2007, plaintiff filed a divorce complaint. That July, defendant obtained a temporary restraining order (TRO) against plaintiff; however, following a trial, the court vacated

the TRO, finding defendant's domestic violence complaint "frivolous."

Before the divorce was finalized, the parties reconciled; they executed a property and reconciliation agreement (PRA) on March 4, 2008. Under the PRA, both parties waived the right to seek child support and spousal support from the other. Plaintiff's counsel prepared the PRA; at that point, defendant did not have legal representation nor had he worked for the previous three years.

Plaintiff filed a second divorce complaint in 2011, followed by a motion to enforce the PRA. The judge granted the motion, finding the PRA enforceable; however, we granted defendant leave to appeal that order, and ultimately remanded for the court to conduct further fact-finding. On remand, the judge found the PRA unenforceable, and memorialized that finding in a November 15, 2013 order.

In April 2014, the court entered a pendent lite order awarding defendant \$80 per week in spousal support. In June 2014, the judge increased plaintiff's spousal support obligation to \$270.00 per week.

The divorce case proceeded to trial over three days in November 2016. Both parties testified at length and defendant presented three additional witnesses. Three months later, the

court entered the JOD, which equitably distributed the parties' property and awarded defendant seven years of term alimony at the rate of \$270 per week. The judge made the award retroactive to April 2014, when defendant started receiving pendente lite support. The judge also awarded plaintiff child support at the rate of \$45.17 per week, after imputing annual income of \$45,590 to defendant. Both parties filed for reconsideration. On October 24, 2016, the judge entered an order amending certain provisions of the JOD and recalculating the income imputed to defendant, resulting in a reduction in his child support obligation to \$18.31 per week. This appeal followed.

II

Plaintiff's notice of appeal states she appeals from the JOD and the October 24, 2016 reconsideration order. In her brief, plaintiff argues the court erred in awarding defendant spousal support, and further asserts the court should have held a plenary hearing as to defendant's claimed disability; in addition, plaintiff argues she should receive the benefit of the PRA.¹

¹ While plaintiff's brief asserts she appeals from the court's November 15, 2013 order finding the PRA unenforceable, her notice of appeal fails to include this order. Moreover, plaintiff's case information statement, which directed her to give the date and summary of judgment, order, or decision being appealed and attach a copy, lists only the February 29, 2016 JOD and October 24, 2016 order; she attached only those orders and did not attach the

Our review of a trial court's fact-finding in a non-jury case is limited, and we owe substantial deference to the Family Part's findings of fact because of the court's special expertise in family matters. Seidman v. Clifton Sav. Bank, 205 N.J. 150, 169 (2011); Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). Thus, "[a] reviewing court should uphold the factual findings undergirding the trial court's decision if they are supported by adequate, substantial and credible evidence on the record." MacKinnon v. MacKinnon, 191 N.J. 240, 253-54 (2007) (alteration in original) (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007)).

III

Plaintiff first argues the court erred in awarding defendant spousal support. We disagree.

Spousal support awards should "take into consideration the real facts and circumstances of each party's financial situation including actual income, expenses, support from other sources and potential earning capacity." Connor v. Connor, 254 N.J. Super. 591, 604 (App. Div. 1992). Spousal support "is neither a

November 15, 2013 PRA order. Accordingly, we decline to address plaintiff's arguments regarding the PRA's enforceability. See W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008) ("It is clear that it is only the orders designated in the notice of appeal that are subject to the appeal process and review.").

punishment for the payor nor a reward for the payee. Nor should it be a windfall for any party." Aronson v. Aronson, 245 N.J. Super. 354, 364 (App. Div. 1991).

When establishing the amount of a spousal support award, the judge must apply the criteria that are contained in N.J.S.A. 2A:34-23(b). Crews v. Crews, 164 N.J. 11, 25 (2000). "[T]he general considerations are the dependent spouse's needs, that spouse's ability to contribute to the fulfillment of those needs, and the supporting spouse's ability to maintain the dependent spouse at the former standard." Id. at 24 (internal quotation marks omitted) (quoting Lepis v. Lepis, 83 N.J. 139, 152 (1980)).

Here, the judge thoroughly considered the factors set forth under N.J.S.A. 2A:34-23 and found the income disparity between the parties significant. He found plaintiff made approximately \$130,000 per year at the time of trial, and the "mean wage for a carpenter is approximately \$45,590." He also found defendant had been absent from the job market for a significant period of time.

Additionally, the judge reviewed the parties' age and health, and acknowledged defendant had serious medical issues; however, he noted defendant failed to present evidence that his medical issues prevented him from working, and found defendant's failure to attempt to find other employment "troubling." Accordingly, we discern no abuse of discretion in the judge's

findings concerning the court's determination to award defendant spousal support.

IV

Plaintiff further argues the court erred by entering its October 24, 2016 reconsideration order, resulting in the reduction of defendant's imputed income and child support obligation. We disagree.

We review a trial court's decision of a reconsideration motion for abuse of discretion. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). On appeal, a trial judge's imputation of a specific amount of income "will not be overturned unless the underlying findings are inconsistent with or unsupported by competent evidence." Storey v. Storey, 373 N.J. Super. 464, 475 (App. Div. 2004). Generally, "[a] party asserting inability to work due to disability bears the burden of proving the disability." Golian v. Golian, 344 N.J. Super. 337, 341 (App. Div. 2001). However, an "SSA adjudication of disability constitutes a prima facie showing that [defendant] is disabled, and therefore unable to be gainfully employed, and the burden shifts to [plaintiff] to refute that presumption." Id. at 342-43. Evidence a party could use to rebut the presumption of disability includes, "lay testimony, expert testimony or medical records, consistent with

the Rules of Evidence, as the trial court deems appropriate." Id. at 343.

In the JOD, the court imputed income of \$45,590 per year to defendant based on the wage compendium for a carpenter's salary. On reconsideration, however, the judge granted defendant's motion to reduce his imputed income to \$1130 per month – the maximum a non-blind disabled individual could earn in substantial gainful activity (SGA), as set by the SSA in 2016, and still qualify for disability benefits.

The court reasoned that its initial decision failed to follow our holding in Golian, that a determination of SSA disability constitutes prima facie evidence of inability to pursue gainful employment. Id. at 342-43. Citing Golian, the judge explained, when "proof of the adjudication is provided to the Court, the burden shifts to the other party to refute the presumption;" although plaintiff produced evidence of defendant "doing some work," she failed to "provide any medical proof" to refute the presumption of disability. As a result, the court reduced defendant's imputed income to \$1130 per month and reduced his child support obligation to \$18.31 per week.


We discern no basis to disturb the judge's reconsideration decision. Plaintiff fails to present significant evidence rebutting defendant's disability, and her assertion that defendant

goes "hunting, fishing, and gambling" fails to rebut the SSA's two determinations finding defendant disabled. Accordingly, the judge's decision is supported by sufficient credible evidence and does not constitute an abuse of discretion.

Any remaining arguments not specifically addressed lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION