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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1105-15T1

R.T.A.,

Plaintiff-Respondent,

v.

R.O.A.,

Defendant-Appellant.

Argued September 13, 2017 – Decided April 30, 2018

Before Judges Fuentes, Koblitz, and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Somerset
County, Docket No. FM-18-0172-14.

Salvatore D. DePinto argued the cause for
appellant.

Dalya Youssef argued the cause for
respondent (Billy E. Delgado, LLC,
attorneys; Dalya Youssef, on the brief).

PER CURIAM

Defendant R.O.A. appeals from the alimony, imputed income and
child support portions of the September 28, 2015 Dual Judgment of
Divorce (DJOD). We affirm substantially for the reasons set forth

in Judge Margaret Goodzeit's comprehensive and well-reasoned fifty-one page written opinion issued with the DJOD.

Plaintiff R.T.A. filed a complaint for divorce on July 17, 2013. Defendant counterclaimed for divorce. An interim support order from January 2014, required defendant to pay plaintiff non-taxable unallocated pendente lite support of \$10,895 per month. This amount was modified in September 2014, to \$6,537 per month. Defendant amassed significant arrears. Following discovery, which included the submission of multiple case information statements (CIS) by both parties, the divorce issues were tried in a multi-day bench trial.

Judge Goodzeit's written opinion that accompanied the DJOD gave thoughtful attention to the many issues raised in this divorce. We address alimony, imputed income and child support, because these are the only issues challenged on appeal by defendant. The evidence is set forth in detail in Judge Goodzeit's opinion, which we summarize here.

Plaintiff and defendant were married in 1988 in Nigeria and lived there for five years before moving to the United States. Together they have four children. The oldest child was an adult when the parties divorced. One was just finishing college. Another was still in high school and the youngest was only twelve.

Defendant has another child, who was born in 2013. Plaintiff is not the mother of that child.

Defendant is a medical doctor who throughout much of the marriage worked at Bronx-Lebanon Hospital and also at two different emergency rooms. Plaintiff attended school at night and obtained a degree in accounting in 2004. But for a brief seven-month internship after graduation, she has not been employed outside the home, attending instead to the care of the children.

Plaintiff had primary responsibility for raising the children. Defendant promised to pay for the children's college education, and plaintiff believed he was saving for this. However, in 2011, plaintiff learned there were no funds for college, she was receiving shut-off notices for the utilities, the older child's student loans had not been paid, and the checking account was overdrawn. The parties' final separation was in April 2013.

Plaintiff acknowledged that she did not look for employment because of her responsibilities for their special needs child. The court found that it would be very difficult for plaintiff to obtain employment in the accounting field because she had little if any work experience. Because she was capable of some employment, however, the court imputed income to her of \$8.38 per hour (minimum wage), amounting to \$17,430.40 annually.

Defendant's 2009 tax return reflected income of \$244,283; in 2010, it was \$202,792; in 2011, it was \$213,347. The court found that defendant's gross income before taxes and contributions to his retirement plans in 2012 was \$312,665.79. In 2013, his wages were \$299,985.08. By 2014, defendant had moved to Saudi Arabia where he earned \$168,321 annually. He expected the same income in 2015.

Plaintiff testified that the parties lived an upper middle-class lifestyle but her several CIS's provided differing accounts. Plaintiff conceded on cross-examination that some of the information in her CIS's was "either erroneous, reflected annual rather than monthly amounts, or reflected expenditures that had not been incurred by the parties in years." Defendant provided little information about the parties' marital lifestyle in his three CIS's. The court found that neither party provided an accurate description of the marital lifestyle budget.

Because of this, the court analyzed the parties' bank account records for a nineteen-month period from July 2011 to March 2013. The court excluded transfers from the account that did not represent family related expenses. The court's analysis showed monthly expenditures of \$18,563.08 during this time frame. The parties' after-tax available cash flow for 2012 was \$20,074.50 per month. Based on these two figures, the court found that the

monthly marital expenses were consistent with defendant's after-tax cash flow and determined that "the marital standard of living required approximately \$18,500 monthly to support."

The court then allocated the \$18,500 monthly lifestyle amount among shelter expenses (\$5,000), transportation expenses (\$2,000), and personal expenses (\$11,500), based on information that the parties supplied. The court found plaintiff's current need for herself and two children, after taxes and based on the marital lifestyle, was \$9,700 per month. This included \$3,500 per month for shelter expenses, \$1,200 per month for transportation, and \$5,000 per month for personal expenses. Defendant's need, based on the marital lifestyle with no children residing in the household, was \$6,000 per month, consisting of \$2,000 per month in shelter expenses, \$1,000 per month in transportation expenses, and \$3,000 per month in personal expenses.

The court considered the factors set forth in N.J.S.A. 2A:34-23(b), in determining the amount and type of alimony. After imputing minimum-wage income, this approach would not leave plaintiff with sufficient funds to maintain the \$9,700 per month marital standard of living for herself and two children; conversely, defendant had the ability to meet his own needs and contribute to plaintiff's needs based on his income. The court

awarded plaintiff open durational alimony in the amount of \$10,000 per month.

In calculating the alimony amount, Judge Goodzeit did not use defendant's salary from his employment in Saudi Arabia because she did not believe that to be a true reflection of defendant's income. Judge Goodzeit relied instead on his income from 2012 and 2013, imputing from that a gross annual income of \$267,485. The judge fixed the amount of alimony plaintiff would receive at \$10,000 per month and imputed minimum wage to her, because after making a deduction for taxes of thirty percent, plaintiff's net amount would be \$8,016.75 per month. Even with child support, this was insufficient to satisfy the marital standard of living for herself and two children. Defendant's income after taxes would net \$8,603.29 per month using the same thirty-percent deduction for taxes.

Judge Goodzeit awarded plaintiff sole legal and physical custody of the two minor children. The judge's child support calculation did not include health insurance or child care costs because none of this information was supplied by the parties. She took into consideration defendant's other child, noting that he was entitled to an "other dependent" deduction.

The Judge calculated child support under the New Jersey Child Support Guidelines (Guidelines)¹ at \$314 per week. However, because the parties combined income exceeded the maximum in the Guidelines, the Judge deviated from the Guidelines. Based on consideration of the factors in N.J.S.A. 2A:34-23(a), Judge Goodzeit supplemented the child support award, increasing it to \$350 per week. After taxes, plaintiff would receive \$8,016.75 in alimony and \$1,517 in child support, for a total of \$9,533.75 monthly, which was slightly below the marital standard of living.

The Judge evaluated defendant's net income as well. His after tax imputed income was \$103,240. After deduction of his child support obligation to plaintiff (\$18,204 annually) and \$500 per month (\$6,000 annually) for his other child, defendant's net income exceeded \$6,000 per month,² which is what was required to satisfy the marital lifestyle.

¹ Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX to R. 5:6A at 2394 (2018).

² The Judge also ordered that defendant's retirement accounts be used to pay the children's student loans. The balance remaining was to be transferred to plaintiff to pay outstanding support arrears. She transferred ownership of defendant's whole life insurance policy to plaintiff. Its cash value was to be used by plaintiff for payment of counsel fees. Defendant was to maintain plaintiff as the beneficiary under defendant's term life insurance policy. Defendant remained responsible to pay the premiums for both policies. Plaintiff was entitled to claim any qualifying children on her income taxes. The Judge ordered defendant to pay

On appeal, defendant contends the alimony award was not based on credible evidence in the record or reflective of the parties' marital lifestyle. The court should have examined the plaintiff's third CIS in conjunction with her testimony as well as the factors set forth in N.J.S.A. 2A:34-23(b) to arrive at an accurate marital lifestyle assessment. Defendant contends the court's order awarded plaintiff excessive alimony by improperly relying on bank records. Defendant argues that Judge Goodzeit also erred in imputing minimum wage income to plaintiff because plaintiff has an accounting degree and could have been earning "two or three times minimum wage." Finally, defendant argues the child support award was not based on "controlling legal principles or sufficient credible evidence." We find no merit in these issues.

On appeal, our review of the judge's decision is limited. We defer to her expertise as a Family Part judge, Cesare v. Cesare, 154 N.J. 394, 412 (1998), and we are bound by her factual findings so long as they are supported by sufficient credible evidence. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)). Because we find that the trial court's

sixty percent of plaintiff's counsel fees, but because there were no liquid assets to pay this, awarded plaintiff the cash value of the whole life insurance policy.

findings are supported by adequate, substantial and credible evidence in the record, we affirm for the reasons set forth in Judge Goodzeit's comprehensive written decision. We add only these brief comments.

"[T]he goal of a proper alimony award is to assist the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage." Crews v. Crews, 164 N.J. 11, 16 (2000). On appeal, alimony awards are not disturbed when the trial judge's conclusions are consistent with the law and not "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, 316 (App. Div. 2001) (quoting Raynor v. Raynor, 319 N.J. Super. 591, 605 (App. Div. 1999)).

Judge Goodzeit did not abuse her discretion by determining the parties' lifestyle based on an examination of their bank records because the records reflected the parties' expenditures when they were living together as a family and at a time when all of defendant's income was placed into one bank account. Defendant did not supply requested financial discovery or complete his CIS's in a manner that would permit the court to analyze his version of the marital lifestyle. The court carefully examined the parties' expenditures and the parties' post-tax income to determine what

the parties were spending to sustain their lifestyle and to corroborate the availability of income to support those expenses. There was nothing lacking in Judge Goodzeit's analysis; the parties' failed to be frank with the court about their finances. The bank records gave the only reliable snapshot of the parties' expenses. Judge Goodzeit fixed the amount of the alimony to meet that lifestyle. Defendant diverted marital funds for non-marital reasons and for his family in Nigeria. He cited no authority for his contention that these diversions reduced the marital standard.

"Imputation of income is a discretionary matter not capable of precise or exact determination but rather requiring a trial judge to realistically appraise capacity to earn and job availability." Storey v. Storey, 373 N.J. Super. 464, 474 (App. Div. 2004).

Plaintiff never held employment in accounting beyond a seven-month internship. She cared for all four of the children while defendant pursued his medical career. She had the added responsibility to deal with a child who required additional supervision and attention. We perceive no error in the amount of income imputed to plaintiff.

The court properly calculated child support by deviating from the Guidelines because the parties' income exceeded the limit. "The trial court has substantial discretion in making a child

support award." Foust, 340 N.J. Super. at 315 (citing Pascale v. Pascale, 140 N.J. 583, 594 (1995)). A child support award that is consistent with the applicable law "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.'" Gotlib v. Gotlib, 399 N.J. Super. 295, 309 (App. Div. 2008) (quoting Raynor, 319 N.J. Super. at 605).


When the parents' income exceeds the maximum amount, the Guidelines are to be applied and then the court is to determine whether any supplementary award is appropriate. See Isaacson v. Isaacson, 348 N.J. 560, 581 (2002); Connell v. Connell, 313 N.J. Super. 426, 431 (App. Div. 1998); Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A, ¶ 20 to R. 5:6A at www.gannlaw.com (2018). In such circumstances, the maximum amount provided for in the Guidelines should be "supplemented" by an additional award determined through application of the statutory factors in N.J.S.A. 2A:34-23(a). See Caplan v. Caplan, 182 N.J. 250, 272 (2005) (providing that the trial court has discretion in "the choice of the methodology to employ" to calculate an award in the best interest of the child).

Here, Judge Goodzeit analyzed the factors under N.J.S.A. 2A:34-23(a) by referencing other sections of its opinion. Defendant does not highlight any specific factor that was not

addressed. We are satisfied the court adequately addressed the relevant factors and that the award meets the children's reasonable needs in light of the family's standard of living during the marriage and the children's best interests. See Isaacson, 348 N.J. Super. at 580-82.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION