SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2651-16T2

CHARLES W. LEE,

Plaintiff-Appellant,

v.

CHIARA CHANDOHA,

Defendant-Respondent.

Submitted April 23, 2018 – Decided May 11, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FM-10-0117-04.

Damiano M. Fracasso, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

In this unopposed appeal, plaintiff Charles Lee, the father of two unemancipated adult children enrolled in college, seeks reversal of the Family Part's November 16, 2016 order denying his request to eliminate his child support obligation for those children. The father asserts the two children reside with him and

not with their mother, defendant Chiara Chandoha, when they are home from college. Additionally, the father appeals the Family Part's February 22, 2017 denial of his motion for reconsideration. For the reasons that follow, we remand for an evidentiary hearing to resolve the contested factual issues.

The parties, who have been divorced since 2004, have three children: a son born in October 1992, a middle child born in November 1995, and a daughter born in June 1997. The parties agreed the oldest child should be emancipated because he has graduated from college, and the trial court accordingly granted that portion of the requested relief.

Child support of $80 weekly, payable to the mother for the two younger children, was established in a September 11, 2013 consent order. In support of his present application for relief from that support level, the father submitted his own certification as well as affidavits from the middle child and the youngest child, attesting that they do not reside with their mother when they are home from college. The motion judge declined to consider those affidavits, even though both of those children are now above the age of eighteen, because she found such involvement in their parents' litigation "inappropriate and not in their best interests."

Meanwhile, the mother's opposing certification disputed the pertinent facts. The mother asserted she still has to expend funds for the children, even though they are living away at college for much of the year. During the motion argument, however, her attorney conceded that the middle child lives with the father when he is not at college. Nevertheless, the mother asserted that the father's child support obligation for the youngest child is less than it would be otherwise, because of the related child support he has been paying for the middle child. By her reasoning, if the middle child's support were reduced or eliminated from the calculus, then support for the youngest child would need to be adjusted higher.

The father contended that the children's college expenses are all paid out of a trust, and that the mother does not have any financial responsibility for them. He argued that she is therefore receiving a windfall in child support. The judge did order a plenary hearing to allocate disputed college expenses, but the parties resolved that particular issue and deemed it moot. Thus no plenary hearing on any subject was conducted.

Certain well established principles guide our review. The standard for the modification of a negotiated child support agreement is one of changed circumstances. Smith v. Smith, 72 N.J. 350, 360 (1977); Jacoby v. Jacoby, 427 N.J. Super. 109, 116,

118-19 (App. Div. 2012). This changed-circumstances standard applies to all requests to modify child support, irrespective of the kind of action in which support was initially ordered. See, e.g., W.S. v. X.Y., 290 N.J. Super. 534, 540 (App. Div. 1996).

Contested material factual matters relating to modification generally need to be sorted out in a plenary hearing. Conforti v. Guliadis, 128 N.J. 318, 322-23 (1992) (requiring plenary hearings to resolve material factual disputes); Tretola v. Tretola, 389 N.J. Super. 15, 20 (App. Div. 2006) (requiring a plenary hearing in a child support modification case). See also Fusco v. Fusco, 186 N.J. Super. 321, 329 (App. Div. 1982) ("[I]f the proper disposition of a matrimonial dispute requires a plenary hearing, the dispute is by definition not subject to disposition on the papers, with or without oral argument."). In such a proceeding, the judge will have a chance to assess the credibility of the movant's assertions and the opposing party's counter-assertions, as tested through the rigors of cross-examination and any clarifying questioning by the court.

We defer to the motion judge's discretion in declining to consider the affidavits executed by the two children in support of their father's motion. Even so, the competing submissions of the father and the mother about the children's true primary residency when they are not at college suffice to create genuine

factual issues. A plenary hearing is necessary to resolve those issues.

At that hearing, the mother's actual position respecting the middle child should be clarified or confirmed. If, after the hearing, the trial court concludes an elimination or adjustment of the support is warranted, the court also shall consider the appropriate effective date of such relief in compliance with N.J.S.A. 2A:17-56.23a, and the propriety of any requested award of reasonable trial and appellate counsel fees.

Remanded for a plenary hearing. We do not retain jurisdiction.