SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3024-15T3

JOHN ZACCARDI,

Plaintiff-Appellant,

v.

CHRISTINE ZACCARDI,

Defendant-Respondent.

Argued January 10, 2018 – Decided March 9, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FM-02-1933-10.

Bonnie C. Frost argued the cause for appellant (Einhorn, Harris, Ascher, Barbarito & Frost, PC, attorneys; Bonnie C. Frost, on the briefs).

Lawrence A. Leven argued the cause for respondent.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff John Zaccardi appeals from two Family Part orders denying, in pertinent part, his requests (1) to terminate his alimony obligation; (2)

for reimbursement of certain child support expenses; (3) to compel defendant Christine Zaccardi to pay half the difference of the cash surrender values of the parties' respective life insurance policies;[1] and (4) for the return of a wrist-watch from defendant or its cash value. Because we determine that the 2014 amendments to N.J.S.A. 2A:34-23, specifically section (k), are applicable to this application to modify alimony, we remand for the proper statutory consideration.

The parties were married in 1990 and had two daughters. A dual final judgment of divorce (FJOD) was entered on June 28, 2012. The FJOD incorporated the terms of a comprehensive marital settlement agreement (MSA), including alimony and child support provisions.

In July 2015, Christine[2] filed a motion to enforce certain provisions of the MSA. John responded by filing a cross-motion, seeking in pertinent part (1) to terminate his alimony obligations; (2) reimbursement for $33,000 in child support; and (3) the return of a watch.

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[1] During oral argument, counsel advised that the life insurance issue had been resolved.

[2] We use the parties' first names for clarity and the ease of the reader. We mean no disrespect.

John alleged that he no longer owned a share of two businesses that he had held when the parties entered into the MSA. He provided financial documents to support his request to terminate his alimony obligation altogether. John also advised that the parties' older daughter was residing with him several days a week while she attended college. He requested reimbursement for the six months of child support he had continued to pay Christine for their two children.

Lastly, John alleged that Christine had sold a watch that was designated for the eldest daughter on her twenty-first birthday. He requested the watch be returned or that Christine pay the daughter its cash value of $5000. Christine opposed the motion, asserting that John's "entire application [was] based on self-serving unsubstantiated financial documents which he . . . manipulated for his own benefit." She noted that John's net worth had more than doubled in the years since their divorce, he continued to take numerous lavish vacations, and there had been no evidence presented to support John's argument that he had to sell his share of the businesses for $1.

Christine conceded that the eldest daughter was living with John; however, she alleged that he had not asked for any credits in the two years in which he was paying the full amount of child support because he knew she could not meet all of the expenses and

needs of the younger child. Going forward, she advised the parties had agreed to each be responsible for a child's needs and expenses. As for the watch, Christine denied having it; she said John had taken it from the house.

In the November 30, 2015 oral decision, the Family Part judge recited the factors set forth in N.J.S.A. 2A:34-23(b)[3] to determine whether termination or modification of alimony was appropriate. He concluded that John had not made a prima facie showing of changed circumstances warranting the termination of his alimony obligation. He noted that John was still employed, had several sources of income, and retained substantial assets.

Although the judge granted John's request to terminate child support payments to Christine going forward, he denied him reimbursement for past payments. He also denied John's request for the return of the watch, noting that Christine denied having possession of it. The judge denied Christine's request for counsel fees.

Christine subsequently moved for reconsideration of the denial of a fee award. John cross-moved for reconsideration of the denial of the termination of alimony and child support credits.

[3] Although the judge mentions that this statute is "recently amended," he does not refer to the new provision, N.J.S.A. 2A:34-23(k).

The judge determined that the cross-motion was untimely and granted counsel fees to Christine for having to defend it. His rulings were memorialized in an order of February 29, 2016.

On appeal, John asserts that the trial judge erred in (1) not holding a plenary hearing to determine whether a termination of alimony was warranted; (2) failing to award him child support credits; and (3) failing to order Christine to pay the cash value of the watch to the elder daughter.

We are mindful that we "accord great deference to discretionary decisions of Family Part judges." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (citing Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009)). We review a trial court's legal conclusions de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

Despite the judge's comment pertaining to the recent amendments to the governing statute regarding alimony modification, he did not apply the new statute. We note he was not asked to do so by counsel and, even on appeal, counsel have not argued that the provisions under the new section (k) of N.J.S.A. 2A:34-23 apply here.

The amendments to the statute became effective on September 10, 2014, more than a year before John filed his cross-motion. The amendments were "designed to more clearly quantify

considerations examined when faced with a request to establish or modify alimony." Spangenberg v. Kolakowski, 442 N.J. Super. 529, 536-37 (App. Div. 2015). Section (k) specifically addresses the circumstances of a W2 wage earner who becomes unemployed and seeks a subsequent reduction in his or her alimony obligation. The provision sets forth a list of statutory factors for a court's consideration when presented with an application to modify alimony.

The issue, then, is whether the amended statute is applicable to this case. For the following reasons, we conclude that it is and, therefore, we remand to the trial judge for a consideration of the section (k) factors.

The bill adopting the alimony amendments contains the following provision:

> This act shall take effect immediately and shall not be construed either to modify the duration of alimony ordered or agreed upon or other specifically bargained for contractual provisions that have been incorporated into:
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> a. a final judgment of divorce or dissolution;
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> b. a final order that has concluded post-judgment litigation; or
>
> c. any enforceable written agreement between the parties.
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> [L. 2014, c. 42, § 2.]

This language "signals the legislative recognition of the need to uphold prior agreements executed or final orders filed before adoption of the statutory amendments." Spangenberg, 442 N.J. Super. at 538.

Here, the issue of a modification or termination of alimony had not been adjudicated prior to the filing of these motions, so there is no final order predating the statute amendment to preclude its application. In turning to the MSA itself, it lists the following conditions, which may result in a modification of alimony:

> A. Death of [w]ife; or
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> B. Death of [h]usband; or
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> C. Wife's remarriage; or
>
> D. Cohabitation under Konzelman v. Konzelman, 158 N.J. 185 [(1999)], which shall trigger a termination of alimony.
>
> E. As otherwise modifiable under New Jersey law.

The only avenue noted in the MSA under which John may pursue a modification in alimony is under New Jersey law. We, therefore, find that the 2014 amendments are applicable to the alimony application here as "the parties had no written agreement to apply a different standard" and "the issue has not already been litigated

and adjudicated by the court." Mills v. Mills, 447 N.J. Super. 78, 97 (Ch. Div. 2016).

On remand, for a complete review, the judge may determine to permit the parties to update their certifications and provide supporting documentation. We also leave it to the judge's discretion as to whether a plenary hearing is warranted.

John's arguments concerning a child support credit and the wristwatch are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E); see also N.J.S.A. 2A:17-56.23(a) ("No payment or installment of an order for child support, or those portions of an order which are allocated for child support . . . shall be retroactively modified by the court.").

Affirmed in part. Vacated and remanded in part. We do not retain jurisdiction.