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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-5309-15T2

N.W.,

Plaintiff-Appellant,

v.

A.S.,

Defendant-Respondent.

Submitted January 24, 2018 – Decided April 3, 2018

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FM-12-1299-11.

N.W., appellant pro se.

Damiano Law Offices, attorneys for respondent
(Steven M. Segalas and Ruchika S. Hira, on the
brief).

PER CURIAM

Plaintiff N.W. appeals from the June 29, 2016 order of the
Family Part that retroactively terminated her limited duration
alimony, reduced defendant A.S.'s equitable distribution
obligation by awarding him offsetting credits, allowed the net

obligation to be paid monthly, modified parenting time and denied counsel fees and sanctions. We reverse the order and remand for further proceedings.

I

The parties were married in India in 2002, filed for divorce in 2010, and following a bench trial, were divorced on January 30, 2012. They have one child.

The dual judgment of divorce (DJOD) incorporated their 2011 custody and parenting time agreement. Under that agreement, the parties share joint legal custody of their child. Plaintiff is the parent of primary residence. Defendant exercised parenting time.

The DJOD required defendant to pay limited duration alimony for four years. In the first year, he paid plaintiff \$3120 per month. Beginning in February 1, 2013, and continuing until January 31, 2016, he paid \$2100 per month. The alimony payments are completed.

Defendant also pays weekly child support. Under the DJOD, child support increased after the first year once alimony decreased. Child support was to be recalculated based on the parties' incomes after the alimony payments were completed.

Under the DJOD, defendant continued to provide the child's health insurance. Plaintiff was entitled to "maintain exclusive

possession" of the marital home, although it was pending foreclosure.

The DJOD addressed equitable distribution of marital assets. Plaintiff and defendant were entitled to one-half of the marital portion of the 401K of the other party. Qualified domestic relations orders (QDROs) were to be prepared for each 401K. The preparation costs would be divided evenly. Plaintiff was to receive one-half of the investment accounts, totaling \$15,885.09. She also was entitled to \$177,675, which was one-half of the marital assets that defendant was found to have dissipated. Defendant was ordered to pay \$10,000 toward plaintiff's attorney's fees. Defendant was to pay all of these amounts in sixty days.

Defendant appealed the "dissipation and distribution of marital assets" portions of the DJOD. See Wadhwa v. Sethi (Wadhwa I), No. A-3121-11 (App. Div. April 24, 2013) (slip op. at 1). In Wadhwa I, we remanded the case to the Family Part for "further consideration and supplementation" of the dissipation issue and retained jurisdiction. Ibid. On remand, the Family Part judge credited defendant with certain premarital funds, which reduced the dollar amount of the dissipated marital assets. However, we restored the credit, determining that "defendant dissipated a total of \$186,000 and must pay plaintiff one-half, the proportion of dissipated assets ordered reimbursed to her by the trial judge."

See Wadhwa v. Sethi (Wadhwa II), No. A-3121-11 (App. Div. Oct. 10, 2014) (slip op. at 2). Under Wadhwa II, defendant was required to pay plaintiff \$93,000 in dissipated assets within sixty days.

On November 25, 2014, defendant filed a motion seeking enforcement of litigants rights because plaintiff moved with their child to Pennsylvania without first obtaining approval of the court, did not comply with the court's order of October 3, 2014, ordering her not to move, or the October 14, 2014 order that required her to move back. Defendant's motion requested custody of the child, termination of alimony, suspension of child support, and an exchange of financial information to recalculate child support in anticipation of the custody change. Defendant requested sanctions and payment of his counsel fees.

In his supporting certification, defendant raised other issues. He wanted plaintiff to pay \$12,000 for unpaid homeowner association fees charged against the marital residence. He disputed the finding that he dissipated marital assets. He asserted he could not repay \$93,000 in sixty days and requested a reasonable payment schedule.

Plaintiff's opposition acknowledged that she moved to Pennsylvania without obtaining permission of the court. She explained that she had lost her job, was unemployed briefly, and then found employment in Allentown, Pennsylvania. Her cross-

motion asked to vacate the order that required her to move back to New Jersey or to give her twelve months to find new employment in New Jersey. In her supporting certification, plaintiff attached her tax returns, which showed she earned \$16,780 in 2012 and \$29,522 in 2013.

On January 9, 2015, the Family Part judge found plaintiff in violation of litigant's rights for moving out of state with the child without first obtaining permission and then by not returning immediately. However, the court denied defendant's request for custody or to return the child to New Jersey. The court found it was in the child's best interest "for plaintiff to continue to reside in Pennsylvania pending the ultimate outcome of the matter at a plenary hearing."

The order denied without prejudice defendant's request to suspend alimony or child support because these obligations were "not affected by plaintiff's unauthorized relocation" to Pennsylvania. However, the court found that plaintiff's increase in income constituted a change in circumstances, warranting recalculation of child support. The parties were to exchange financial information. The court gave defendant an additional

thirty days to pay all of the equitable distribution obligations¹ and denied sanctions.

The parties conducted discovery in anticipation of the plenary hearing. However, it was adjourned due to settlement attempts, phone and case management conferences, illness and retention of new counsel. The plenary hearing was never conducted.

Plaintiff filed a motion on March 26, 2016 seeking to enforce litigant's rights. Defendant had not paid her the amounts owed under the DJOD. Plaintiff asked for an order that required defendant to pay her with statutory interest. If the amount were not paid in two weeks, she requested liquidation of defendant's 401K to pay her, and that he pay all taxes and fees associated with the withdrawal of those funds. She wanted defendant to prepare the QDROs or for her to be appointed power of attorney to do so. Plaintiff consented to transfer custody of their child to defendant at the end of the school year to eliminate the need for the plenary hearing.

¹ This included \$93,000 in dissipated assets; \$3075 for attorney's fees ordered on August 29, 2012; \$49,774.70, which was one half of the joint and individual bank accounts based on paragraph 10 of the DJOD; \$15,885.09, which was one-half of the investment accounts including the Scottrade and Ameritrade accounts from paragraph 12 of the DJOD; and \$10,000 for plaintiff's legal fees from paragraphs 9 and 14 of the DJOD.

Defendant filed a cross-motion that renewed his request for custody, but only if the court also permitted his relocation out of state "wherever my employment is secured." He asked to modify the parenting time schedule.

In his cross-motion, defendant also asked to terminate alimony payments retroactively to October 1, 2014. Defendant alleged he would be losing his job shortly. In 2015, he earned \$181,000. In 2014, plaintiff's income increased to \$67,228 and by 2015, she was earning \$86,000. Defendant alleged there was no need for alimony once plaintiff's income increased. Because defendant's alimony payments were already completed, retroactive termination would result in a \$33,600 refund to him that he wanted credited against the other monies he owed plaintiff.

Plaintiff objected to termination of alimony. She noted that when the alimony payments commenced, she had been imputed income of \$40,000 annually even though she was earning minimum wage at the time. She also wanted a thirty percent reduction in any amount refunded to reflect defendant's tax benefit for the years he paid alimony.

Defendant's cross-motion asked to modify child support retroactively to November 25, 2014, the date when he first filed for a modification and to exchange financial information. Defendant asked to apply any child support overpayment as a credit

against his unpaid equitable distribution. Plaintiff did not object to a recalculation using current salaries.

Defendant's cross-motion requested that plaintiff pay the \$7000 settlement he reached with the homeowner's association for the amount of outstanding fees. Plaintiff objected because a portion of the fees were incurred while they were married. Under a pendente lite support order defendant was responsible to pay "roof expenses."

Defendant asked to credit his share of the marital portion of plaintiff's 401K, which he estimated to be \$11,785.90, against the outstanding equitable distribution. His cross-motion also requested to repay the outstanding balances under the DJOD at \$1500 a month. With the credits he contended he was due, that amount was \$72,550.99. Plaintiff objected to the requests and wanted payment in full of the outstanding equitable distribution, contending the credits were "contrived."

Defendant's cross-motion asked for an order, requiring plaintiff to provide health insurance for the child as of June 1, 2016. Plaintiff agreed to provide health insurance but after the October 1, 2016, open enrollment period. Both parties sought payment of counsel fees.

Plaintiff's motion and defendant's cross-motion were heard on June 24, 2016. The Family Part judge terminated plaintiff's

alimony based on changed circumstances. The court found that because plaintiff's income exceeded the amount of income that was imputed to her in the divorce "that there cannot now be an alimony claim." The court stated that "alimony was based on need . . . and preserving the lifestyle." "The need is no longer there. You have [A.S.] who is unemployed. You're working."

The parties agreed that defendant's equitable distribution obligation under the DJOD, including dissipated assets, was \$171,734.89 without any credits or offsets. The court denied plaintiff's request for interest on the unpaid equitable distribution and for sanctions because "the money was preserved . . . you don't lose anything."

In addressing defendant's requests for credits, the court was "inclined" to grant defendant's request for an offset of \$33,600 representing the amount of alimony paid after October 1, 2014, as a credit against his equitable distribution obligation. The court denied plaintiff's request to reduce this amount to reflect the tax savings defendant enjoyed by deducting alimony from his taxes, because it was "not raised in [her] moving papers."

The judge credited defendant with other amounts. The parties agreed that defendant paid plaintiff \$15,000 in June 2015. There were thirteen checks for \$1500 and one for \$10,000 that plaintiff

received but did not cash because of their ongoing dispute. Plaintiff was to return those checks to defendant.

The court found the unpaid homeowner's fees to be "an outstanding marital debt." The court "split" responsibility between the parties for the \$7000 settlement defendant negotiated, giving defendant a thirty-five hundred dollar credit against the outstanding equitable distribution.

The court denied defendant's request for a \$1936 credit for child support, stating "I'm just going to deny it . . . I think that's fair." The court provided it would recalculate child support based on current financial information.

Without analysis, the court granted defendant's request to pay his equitable distribution obligation in \$1500 monthly installments. The court denied plaintiff's request for interest on the outstanding amount because "this hasn't been reduced to a judgment." The judge ordered the preparation of QDROs for the 401K's.

The court made "no decision on [custody]" telling defendant's counsel that "your client will have to make a new application." At defendant's urging, the court agreed to keep the issue open for sixty days. The child would stay with plaintiff and if defendant "hasn't established residency" in sixty days then defendant would have to make application at a future date. Plaintiff agreed with

defendant's request for four consecutive weeks of parenting time in the summer. The court determined this should "start[] the last week in July, three weeks in August."

The court ordered plaintiff to supply health insurance for the child beginning in November 2016, after the open enrollment period, as she had agreed. The judge denied both party's application for counsel fees, without analysis.

The court asked defendant's attorney to prepare the order. The June 29, 2016 order included parenting time schedules the court had not ordered. It did not reflect that defendant's consecutive weeks of vacation with the child would be starting in the last week of July, but allowed defendant to exercise vacation in two-week blocks upon one month's notice to plaintiff. Plaintiff's obligation to provide health insurance for the child started in June, not November 1, 2016. The order retroactively modified child support to November 25, 2014.

Plaintiff appeals from the June 29, 2016 order. She contends the court erred by ordering repayment of the unpaid equitable distribution at \$1500 per month and by denying her request for interest and sanctions. She argues the court erred by allowing credits to defendant from the equitable distribution for homeowners fees, which was not supported by evidence, and for alimony, which did not consider the parties case information

statements, incomes or the need for alimony. She contends child support was based on inflated numbers. She asserts the court's order, denying counsel fees, was an error because of defendant's bad faith in objecting to her relocation. Plaintiff contends the June 29, 2016 order did not reflect the court's actual decisions.²

II

We accord "great deference to discretionary decisions of Family Part judges," Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012), in recognition of the "family courts' special jurisdiction and expertise in family matters." N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). However, we will not hesitate to set aside a ruling that is "so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 38 (2011) (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Hitesman v. Bridgeway, Inc., 218 N.J. 8, 26 (2014) (citing Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

² Because defendant has not filed a cross-appeal, his requests are not properly before us.

In modifying alimony, factors to consider 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." Crews v. Crews, 164 N.J. 11, 24 (2000) (quoting Lepis v. Lepis, 83 N.J. 139, 152 (1980)). There is no statute that prevents its retroactive reduction, in contrast to N.J.S.A. 2A:17-56.23(a), that limits the retroactivity of child support modification to the date of the motion for modification. See Walles v. Walles, 295 N.J. Super. 498, 514 (App. Div. 1996).

The DJOD required defendant to pay plaintiff limited duration alimony for four years. Limited duration alimony is "awarded in recognition of a dependent spouses contributions to a relatively short-term marriage" Cox v. Cox, 335 N.J. Super. 465, 483 (2000). "An award of alimony for a limited duration may be modified based either upon changed circumstances, or upon the nonoccurrence of circumstances that the court found would occur at the time of the award[,]" and a court "shall not modify the length of the [limited duration alimony] except in unusual circumstances." N.J.S.A. 2A:34-23(c).

Here, the court terminated the limited term alimony by finding that plaintiff's income constituted a change in circumstances because it exceeded the amount of income that was imputed to her

when the DJOD was entered. This decision was made without apparent consideration of her expenses, the parties' lifestyle during the marriage or defendant's income. There was nothing in the DJOD providing that alimony could be modified or terminated based on plaintiff's increase in income. In terminating the alimony retroactively, the court effectively changed the term of the limited duration from four years to two years. The court did not explain what circumstances were "unusual" that would warrant that result particularly here, after the alimony already was paid.

The Rules provide a trial judge "shall, by an opinion or memorandum decision, either written or oral, find the facts and state [his or her] conclusions of law thereon . . . on every motion decided by a written order that is appealable as if right." R. 1:7-4(a). "The Rule requires specific findings of fact and conclusions of law[.]" Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4 (2018). "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)). See Gordon v. Rozenwald, 380 N.J. Super. 55, 78 (App. Div. 2005) (providing that "[f]indings of this sort, without reference to the supporting evidence, are insufficient to permit review by this court"). The court's lack of findings based on the

evidence precludes meaningful review of the decision to terminate alimony.

Other portions of the court's June 29, 2016 order similarly lack findings of fact and conclusions of law. The court did not explain why \$1500 per month was a reasonable repayment schedule for equitable distribution. The decision was lacking any reference to the record about defendant's finances. Although the parties agreed the unpaid equitable distribution was \$171,734.89 without credits, the court did not make any findings about how much defendant paid to plaintiff, whether that amount remained disputed or why repayment was not made in whole or in part from defendant's 401K. The court did not reference any provision of the DJOD that allowed the payment of equitable distribution net of credits or offsets.

The court did not explain why plaintiff was responsible to pay half of the homeowner's association fees. The homeowner's association sued defendant, not plaintiff. There were no factual findings about the amount of the fees, when they were incurred or why plaintiff was responsible to pay them. The June 29, 2016 order did not accurately reflect defendant's consecutive weeks of vacation with the child. It ordered plaintiff to provide health insurance for the child as of June, not November 2016. It included a schedule for parenting time that was not discussed at the motion.

The court denied counsel fees without consideration of the factors set forth in Rule 5:3-5(c), and without any findings of fact or conclusions of law.

We are constrained, therefore, to reverse and remand the June 29, 2016 order because the court did not make specific findings of fact or conclusions of law as required by Rule 1:7-4(a). The court should conduct a case management conference within thirty days limited to the issues in plaintiff's March 26, 2016 motion and defendant's responding cross-motion. The court should schedule a further proceeding to resolve the motions with appropriate findings of fact and conclusions of law. The court may require a plenary hearing if necessary to resolve factual disputes.

Plaintiff's removal of the child to Pennsylvania is moot because our decision "can have no practical effect on the existing controversy." Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 258 (App. Div. 2006). Although a plenary hearing on plaintiff's removal to Pennsylvania was never held, the briefs make clear that defendant has relocated to Florida for employment. Defendant does not explain why relief is necessary now that none of the parties resides in New Jersey.

Plaintiff's further arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded for proceedings consistent with this
opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION