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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FM-13-0901-13

K.A.,

Plaintiff,

v.

F.A.,

Defendant.

APPROVED FOR PUBLICATION
June 23, 2022
COMMITTEE ON OPINIONS

Decided: June 15, 2020

Brian Largey, for plaintiff (Largey Law, attorneys)

Angela F. Pastor, for defendant (Law Offices of Pastor and Pastor, LLC, attorneys)

ACQUAVIVA, J.S.C.

This case presents a question of first impression: may a child support obligation be modified retroactively prior to the date of application where the substantial, permanent change in circumstances is an adult adoption that terminated the obligor's parental rights. For the reasons stated herein, the court concludes that N.J.S.A. 2A:17-56.23a's ban on retroactive modification

to child support does not bar modification, or even termination, of child support retroactive to the date of the adult adoption.

I.

Despite the parties' litigious history, the salient facts on this issue are not disputed. The parties were married in 1997 and had three children. They divorced in February 2008 pursuant to a final judgment of divorce that incorporated a marital settlement agreement which provided for, among other things, F.A.[1] to pay unallocated child support. Thereafter, K.A. re-married. When the oldest child matriculated at college, the court modified F.A.'s on-going child support in February 2017, such that a portion of the support obligation was allocated to the oldest child, but the remainder of the support obligation was unallocated among the two younger children.

On July 19, 2018 – after their respective eighteenth birthdays – the two oldest children were adopted by their stepfather. Their biological father, F.A., now seeks to terminate his support obligation for the two adopted children and, accordingly, modify his child support obligation for the third child retroactive to July 19, 2018. Although K.A. agrees that a modification of support is appropriate, she objects to any retroactive modification, contending that

[1] The parties are identified by initials to protect their and their children's confidentiality. R. 1:38-3(d).

because the support obligation was unallocated, any modification may only be retroactive to the date of the current application – not the date of the adoptions.[2]

II.

It is axiomatic that "[e]ach parent has a responsibility to share the costs of providing for the child while [the child] remains unemancipated." Martinetti v. Hickman, 261 N.J. Super. 508, 512 (App. Div. 1993). Even where there is estrangement between the non-custodial parent and the child, the support obligation continues. L.V. v. R.S., 347 N.J. Super. 33, 43 (App. Div. 2002) ("[H]owever sharp the serpent's tooth, an ungrateful child does not relieve a parent of the duty of support."). Put another way, "[t]here is no divorce between parent and child." Zazzo v. Zazzo, 245 N.J. Super. 124, 130 (App. Div. 1990).

Also well-established is that child support orders are subject to review and modification on a prima facie demonstration of a substantial, permanent change in circumstances. See, e.g. Lepis v. Lepis, 83 N.J. 139, 157 (1980). A child's adoption or emancipation constitutes such a changed circumstance – a legal principle the parties do not dispute here. E.g., J.B. v. W.B., 215 N.J.

[2] For purposes of publication, this opinion is an abridged version of the court's initial opinion which addressed additional reliefs.

305, 327 (2013); Harrington v. Harrington, 446 N.J. Super. 399, 401 (Ch. Div. 2016).

As a general proposition, N.J.S.A. 2A:17-56.23a prohibits courts from retroactively reducing child support obligations prior to the date of application. That statutory prohibition may, at times, lead to unforgiving impacts. See, e.g., Mallamo v. Mallamo, 280 N.J. Super. 8, 14 (App. Div. 1995) (noting "dire financial consequences which could befall an obligor who fails to file a timely motion for modification"). With limited exceptions, courts doggedly enforce the prohibition on retroactive modifications. See, e.g., Ohlhoff v. Ohlhoff, 246 N.J. Super. 1, 8 (App. Div. 1991) (change in custody prior to application insufficient for retroactive modification). Nevertheless, courts have carved out limited exceptions to the, at times, inequitable effects of N.J.S.A. 2A:17-56.23a. See, e.g., Centanni v. Centanni, 408 N.J. Super. 78, 82 (Ch. Div. 2008) (child's death).

The most notable exception to the statutory ban on retroactive modifications – and most analogous to the circumstances here – is for a child's emancipation. Mahoney v. Pennell, 285 N.J. Super. 638, 643 (App. Div. 1995); Bowens v. Bowens, 286 N.J. Super. 70, 73 (App. Div. 1995). Yet, to date, no court has addressed whether the adult adoption of a child constitutes

an additional, limited exception to N.J.S.A. 2A:17-56.23a's otherwise applicable ban on retroactivity.

Emancipation is the conclusion of "the fundamental dependent relationship between parent and child." Filippone v. Lee, 304 N.J. Super. 301, 308 (App. Div. 1997). Although few bright lines exist, "[i]n the end[,] the issue is always fact-sensitive and the essential inquiry is whether the child has moved 'beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his or her own.'" Ibid. (quoting Bishop v. Bishop, 287 N.J. Super. 593, 598 (Ch. Div. 1995)).

On emancipation, the rights and obligations related to care, custody, and – most relevant here – support incident to the parent-child relationship are extinguished. Newburgh v. Arrigo, 88 N.J. 529, 543 (1982). Although emancipation does not fully sever the relationship, as rights to inheritance and other limited rights continue, on emancipation "a parent relinquishes the right to custody and is relieved of the duty to support a child." Ibid.

In recognition of the legal consequences of emancipation, on December 20, 1995, a singular Appellate Division panel issued a tandem of decisions discussing the interplay of N.J.S.A. 2A:17-56.23a's ban on retroactive modification and emancipation.

First, in Mahoney, the Court noted that "[i]mplicit . . . in the judicial obligation to enforce the terms of a child support order is the underlying premise that a duty to support exists." 285 N.J. Super. at 643. Because on emancipation "there is no longer a duty of support [and thus] no child support can become due," the court could not "ascribe to [N.J.S.A. 2A:17-56.23a] . . . any indication that the legislature so intended[] to bar termination of child support retroactively to the time a child became emancipated." Ibid. Thus, the court held that "N.J.S.A. 2A:17-56.23a does not bar the cancellation of child support arrearages which accrued subsequent to the date of the minor's emancipation as retroactively determined by the court." Ibid.

Second, in Bowens, the court held that even where a "judicial declaration of emancipation was not announced on or near the date of occurrence, that should not detract from when emancipation occurred." 286 N.J. Super. at 73. There, the child was retroactively deemed emancipated on May 20, 1988. Although the application to eliminate arrearages was not filed until September 1993 – some five years after emancipation – the court in Bowens concluded that despite such a significant delay, any arrearages accruing from the emancipation date were to be cancelled.

With that settled law as backdrop, the court must consider here whether an adult adoption is sufficiently analogous to emancipation, such that the

principles undergirding Mahoney and Bowens should be extended to create an additional, limited exception to N.J.S.A. 2A:17-56.23a's ban on retroactive modification to child support.

"[S]olely a creature of statute" and recognized by New Jersey law since 1925, L. 1925, c. 99, codified at N.J.S.A. 2A:22-1 to 2A:22-3, adult adoptions serve myriad purposes including situations, as here, where "a step-child . . . has developed a strong relationship with a step-parent." In re P.B. for Adoption of L.C., 392 N.J. Super. 190, 192-95 (Law Div. 2006). The adult adoption statute requires a ten-year age difference between the adult to be adopted and the adopting adult to "ensur[e] a semblance of a parent-child relationship" between the parties. Id. at 197.

The adult to be adopted must "request[]" the adoption. N.J.S.A. 2A:22-2. And, importantly, in the adult adoption context, notice need not be provided to the natural parent or parents. In re Adoption of Adult by C.K., 314 N.J. Super. 605, 609 (Ch. Div. 1998).

As with a child adoption, an adult adoption establishes the same rights, privileges, and obligations between the parties as if the adopted adult had been born of the adoptive parent. Unlike child adoption, however, which terminates all rights and obligations between the child and the natural parent, adopted adults retain the right to inherit intestate from their natural parents. N.J.S.A.

2A:22-3(a). Putting that distinction aside, as with a child adoption, an adult adoption terminates all other "rights, privileges and obligations due from the natural parents to the person adopted." N.J.S.A. 2A:22-3(b) (emphasis added). Thus, and as the parties concede here, F.A. no longer has a child support obligation to his two oldest children who were adopted as adults. But, as with an emancipated child, rights of intestate inheritance remain.

Although the parties acknowledge that the adult adoption of the two oldest children is a Lepis changed circumstances sufficient to warrant a review and modification of the on-going child support obligation for the youngest child, the parties dispute whether the child support obligation should be modified retroactive to the date of the application or to the date of the adult adoptions.

On this issue, due to the fundamental similarity between adult adoption and emancipation whereby both terminate parental obligations of support, the court concludes that N.J.S.A. 2A:17-56.23a does not bar a retroactive modification to child support where the substantial, permanent change in circumstances is an adult adoption because on adoption, as on emancipation, any on-going financial support obligation is extinguished. Cf. Mahoney, 285 N.J. Super. at 643 (reasoning that where no duty of support exists, no duty of support can arise).

The similarities between an adult adoption and an emancipation are patent. In both situations, the child is no longer legally subject to the natural parent's authority or control. In both situations, the natural parent's custodial rights are relinquished. And, most important and dispositive here, in both situations the natural parent is relieved of the financial burden of supporting the child's basic necessities.

Moreover, and again, the adult adoption statute does not require approval of – let alone notice to – the natural parent or parents of the adult requesting the adoption. As stated by then-Judge Hoens in Adoption of Adult by C.K., on attaining the age of majority, the individual "is not a child, but an adult, who is automatically imbued with a wide variety of rights and choices with which their parents generally have no right to interfere. . . . And with those rights comes the extinction, in reality, of the parent's right to object." 314 N.J. Super. at 610-11. The lack of notice requirements "recognizes the fact that with adulthood come rights and responsibilities of the adult not enjoyed by any child." Id. at 610.

Accordingly, "[t]he adult adoption statute reflects the State's public policy of allowing 'adoption[s] between consenting persons, with the ability to enter a contract, when there is a strong benefit to be gained.'" In re Estate of

Fenton, 386 N.J. Super. 404, 414 (App. Div. 2006) (quoting In re Adoption of an Adult by G.V.C., 243 N.J. Super. 651, 653-54 (Ch. Div. 1990)).

That central tenant of the adult adoption rubric demonstrates beyond peradventure that an adult child who applies for an adult adoption has moved beyond the parental sphere of influence required for a finding of emancipation. See Filippone, 304 N.J. Super. at 308. Again, the adult to be adopted must "request[]" the adoption pursuant to N.J.S.A. 2A:22-2, and the biological parent need not be notified. Because the parental financial obligation ends on the adult adoption, as Mahoney notes, no child support thereafter can become due for the adopted adult and, thus, N.J.S.A. 2A:17-56.23a cannot bar the cancellation of child support for a period during which no duty of support existed. 285 N.J. Super. at 643.

This case, however, is further complicated by the fact that F.A.'s child support obligation for the two youngest children was unallocated. Because of that lack of allocation, K.A. further contends that that the child support obligation cannot be retroactively modified prior to the date of application. Not so.

N.J.S.A. 2A:17-56.68 provides that where a child support obligation is unallocated, the obligation continues beyond the termination event – here the adult adoption of the two oldest children – and that "[e]ither party may file an

application . . . to adjust the remaining child support amount to reflect the reduction in the number of dependent children." That statutory provision is silent, however, regarding retroactivity.

In the emancipation context, the issue of previously unallocated support was addressed in Harrington. There, after noting that Mahoney and Bowens did not concern unallocated support orders for multiple children, the court held that where a party requests a retroactive modification of unallocated child support for multiple children premised on emancipation, the court has "discretion to retroactively modify . . . child support back to the date of a child's emancipation, depending upon certain equitable factors . . . ." Harrington, 446 N.J. Super. at 401.

The factors are:

> 1) How much time has passed between the date of one child's emancipation and the filing date of the obligor's present motion for retroactive modification of unallocated child support for the remaining unemancipated child or children?
>
> 2) What are the specific reasons for any delay by the obligor in filing a motion to review support based upon emancipation?
>
> 3) Did the non-custodial parent continue to pay the same level of child support to the obligee, either by agreement or acquiescence, and of his or her own decision and free will, even after he/she could have filed a motion for emancipation at a prior point in time?

4) Did the custodial parent or child engage in any fraud or misrepresentation that caused the obligor's delay in filing a motion for emancipation and support modification motion?

5) If the non-custodial parent alleges that the custodial parent failed to communicate facts that would have led to emancipation and modification of support at an earlier date, could the non-custodial parent have nonetheless otherwise easily obtained such information with a reasonable degree of parental diligence and inquiry?

6) If the obligor's child support obligation was unallocated between multiple unemancipated children of the parties, will a proposed retroactive modification of child support over a lengthy period of time be unduly cumbersome and complicated, so as to call into question the accuracy and reliability of the process and result?

7) Did the custodial parent previously refrain from seeking to enforce or validly increase other financial obligations of the non-custodial parent, such as college contribution for any remaining unemancipated child, because during such time period, the noncustodial parent continued to maintain the same level of unallocated child support without seeking a decrease or other modification?

8) Is the non-custodial parent seeking only a credit against unpaid arrears, or rather an actual return of child support already paid to, and used by, the custodial parent toward the financial expenses of the child living in the custodial parent's home?

9) If the non-custodial parent seeks an actual return of money previously paid to the custodial parent, what is the estimated dollar amount of child support that the non-custodial parent seeks to receive back from the

> custodial parent, and will such amount likely cause an inequitable financial hardship to the custodial parent who previously received such funds in good faith?
>
> 10) Are there any other factors the court deems relevant to the analysis?
>
> [Id. at 407-09.]

The facts here are unique. Regardless of fault – a hotly contested issue in the parties' competing certifications – F.A.'s relationship with his children is strained. Nevertheless, the record reveals that in July 2018 and again in October 2018, he had – at a minimum – constructive notice of his children's adoption requests. Although he waited 20 months to seek a child support modification, such delay does not, as K.A. contends, weigh strongly against retroactivity.

Could he have filed his application sooner? Of course. But this is not a case where the obligor sat on his rights for years and now seeks to unwind an extraordinary amount of time during which substantial reliance occurred. Rather, the temporal period and any reliance that accrued during that period were modest. Moreover, on the dual adoptions, his broader child support obligation was not terminated in full, because he still has a third child to financially support. That fact is critical. Thus, F.A. is not seeking a full refund of any and all overpayment, but rather a credit towards his on-going and future payments.

Also relevant is K.A.'s request for reimbursement of child-related expenses such as unreimbursed medical expenses for which F.A. has a responsibility through July 2018 for all three children and, thereafter, for his youngest child. Thus, this is not a case where the obligee, K.A., will have to proverbially "go out of pocket" to reimburse the obligor for funds that she otherwise relied on. Rather, this is a case where F.A. is entitled to reasonable credits for a fairly modest period of time of overpayment which may, in large measure, be offset against unreimbursed medical expenses.

Nevertheless, a number of considerations prohibit the court from recalculating child support at this juncture including an incomplete financial picture. Accordingly, the parties shall proceed to mediation for the recalculation of child support, among the other financial issues raised in these motions.[3]

[3] The parties subsequently entered into a consent order resolving all issues.