SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0103-21

JOHN YOUNG,

Plaintiff-Respondent,

v.

CATARINA SANTOS-YOUNG,

Defendant-Appellant.

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Submitted October 25, 2022 – Decided November 22, 2022

Before Judges Messano and Gilson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-2504-15.

The Law Office of Thomas R. Ashley, attorneys for appellant (Thomas R. Ashley, of counsel; Michael T. Ashley, on the briefs).

Deborah A. Rose, attorney for respondent.

PER CURIAM

Defendant Catarina Santos-Young appeals from the Family Part's March 8, 2021 order denying her motion for relief from the July 2015 final judgment of divorce (JOD) between defendant and her former husband, plaintiff John Young, and to reopen and amend the property settlement agreement (PSA) that was incorporated into the JOD. We provide some background based on certifications the parties filed in the Family Part.

Plaintiff and defendant were married in 1997 and had two children, a daughter born in 2000 and a son born in 2001. There were early tensions in the relationship before defendant was indicted and convicted of theft. She served a portion of her seven-year sentence before being admitted into the Intensive Supervision Program and released from custody. Prior to her conviction, defendant owned and operated a successful insurance brokerage business.

In approximately April 2015, the parties separated in contemplation of divorce, and, without counsel, executed the PSA in May 2015. Plaintiff at the time was Deputy Chief in the Elizabeth Fire Department. The PSA stated the parties would share joint custody of the children, and plaintiff would be solely responsible for more than $400,000 in marital debt, and plaintiff would pay: (1) defendant $72,000, reflecting two years of her rent obligations; (2) child support in the amount of $400 a month per child until June 15, 2020; (3) 100% of the

children's college education; and (4) $62,000 as a lump sum advance for child support.

Plaintiff took title to the marital home and one of the parties' investment properties; they agreed to sell and split the proceeds of a second investment property. The PSA also contained a mutual waiver of alimony, but it made no mention of plaintiff's pension. Plaintiff and defendant appeared pro se at the divorce hearing; each testified they had entered into the PSA voluntarily, and both accepted the terms as fair and reasonable.

Plaintiff retired in 2019. On January 20, 2021, defendant filed a motion seeking modification and enforcement of child support and relief from the JOD pursuant to Rule 4:50-1 (the Rule).[1] Defendant said she was "under extreme

[1] In relevant part, the Rule, states:

> On motion . . . and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . for the following reasons: . . . (e) the judgment . . . has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment . . . .

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pressure and duress" when she executed the PSA and "clearly . . . did not waive [her] interest in . . . [p]laintiff's pension." According to defendant, she and plaintiff "overlook[ed] including the [p]ension [in the PSA] because it was unliquidated at the time." Plaintiff filed opposition.

On March 5, 2021, the judge heard oral argument and issued a decision from the bench denying defendant's request to reopen the JOD, modify the PSA, and equitably distribute plaintiff's pension. The judge reasoned it was "not possible" to "rescind [the PSA] and restore the parties to the position they would have been in had the [PSA] not been entered into." The judge also said defendant was "clearly aware of [plaintiff's] pension" when he retired in 2019, but did not seek relief until 2021. The judge also determined that plaintiff had not committed any "fraud," nor had he materially misrepresented the value of his pension, and both parties understood the PSA's terms, agreed to them, and testified under oath that they were fair and reasonable.

The judge's order, filed on March 8, 2021, was accompanied by a written statement of reasons that echoed her earlier oral decision. Additionally, citing the Rule, the judge reasoned defendant failed to seek relief within "a reasonable time frame," noting, "[t]his matter was settled more than five years ago." The judge ordered both parties to provide updated financial information and, in a

subsequent July 22, 2021 order, the judge established plaintiff's child support obligations.

Before us, defendant contends the judge should have reopened the JOD based on "plaintiff's fraudulent non-disclosure of his pension," and the judge's denial of relief pursuant to subsections (e) and (f) of the Rule was an abuse of discretion. We disagree and affirm.

"We review a decision on a Rule 4:50-1 motion for an abuse of discretion." D.M.C. v. K.H.G., 471 N.J. Super. 10, 27 (App. Div. 2022) (citing U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)). "An abuse of discretion exists 'when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis."'" Ibid. (quoting Guillaume, 209 N.J. at 467–68).

The Rule

> does not provide "an opportunity for parties to a consent judgment to change their minds; nor is it a pathway to reopen litigation because a party either views his [or her] settlement as less advantageous than it had previously appeared, or rethinks the effectiveness of his [or her] original legal strategy."
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> [Id. at 26 (alterations in original) (quoting DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009)).]

"[A]pplications for relief from equitable distribution provisions contained in a judgment of divorce are subject to [the Rule] and not, as in the case of alimony, support, custody, and other matters of continuing jurisdiction of the court, subject to a 'changed circumstances' standard." Eaton v. Grau, 368 N.J. Super. 215, 222 (App. Div. 2004) (second alteration in original) (citing Pressler, Current N.J. Court Rules, cmt. 1.7 on R. 4:50-1 (2004)).

The defendant's brief relies nearly exclusively upon subsection (f) of the Rule for relief. It is well accepted that "[m]odification of the equitable distribution provisions of [a] property settlement agreement . . . is governed by Rule 4:50-1(f)." Harrington v. Harrington, 281 N.J. Super. 39, 48 (App. Div. 1995). "[R]elief from judgments pursuant to Rule 4:50-1(f) requires proof of exceptional and compelling circumstances." Ibid. (citing Baumann v. Marinaro, 95 N.J. 380, 393 (1984)); see also D.M.C., 471 N.J. Super. at 26 ("Relief under the rule 'requires the demonstration of "exceptional circumstances."'" (quoting In re Est. of Schifftner, 385 N.J. Super. 37, 41 (App. Div. 2006))).

"A movant must show that the enforcement of the judgment 'would be unjust, oppressive or inequitable.'" Ibid. (quoting Eaton, 368 N.J. Super. at 222). "In such exceptional circumstances, Rule 4:50-1(f)'s 'boundaries are as expansive as the need to achieve equity and justice.'" Johnson v. Johnson, 320

N.J. Super 371, 378 (App. Div. 1999) (quoting Ct. Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)).

"[C]ourts have allowed modification of [PSAs] under the catch-all paragraph (f) of Rule 4:50-1 . . . where there is a showing of inequity and unfairness." Rosen v. Rosen, 225 N.J. Super. 33, 36 (App. Div. 1988) (citations omitted). "Further, where there is a showing of fraud or misconduct by a spouse in failing to disclose the true worth of his or her assets, relief may be granted under Rule 4:50-1(f) if the motion is made within a reasonable time." Id. at 37 (citing Palko v. Palko, 73 N.J. 395, 397–98 (1977)). However, "relief cannot be afforded under Rule 4:50-1(f) when 'events [] should have been in contemplation of the parties as possible contingencies when they entered into' their [PSA]." Torwich v. Torwich, 282 N.J. Super. 524, 527–28 (App. Div. 1995) (first alteration in original) (quoting Schwartzman v. Schwartzman, 248 N.J. Super. 73, 77 (App. Div. 1991)).

Notwithstanding defendant's contention in her brief that plaintiff fraudulently failed to disclose that he would eventually receive a pension from his service on the Elizabeth Fire Department, nothing in the record supports that claim. Defendant's own certifications do not assert any deception; she said the parties overlooked the asset. The judge found that difficult to believe, as do we,

especially since plaintiff's certification claimed defendant repeatedly acknowledged she would not make any claim on the pension. We do not resolve what are clearly disputed facts, but the existence of these disputed facts, plus the lack of an affirmative contention to the contrary by defendant, warrant a conclusion that plaintiff did not fraudulently conceal his pension.

Although rather tersely stated, the judge did conclude the PSA was not inequitable, and we agree with her. Plaintiff paid defendant $72,000 to defray the costs of renting a new residence, as well as a lump sum payment of $62,000 in child support. Plaintiff agreed to pay a reasonable amount of child support, all the children's higher education expenses, and assumed approximately $440,000 of marital debt. Under all these circumstances, we do not think the judge abused her discretion in denying defendant relief pursuant to subsection (f) of the Rule.

Affirmed.