SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0403-21

DOMINIQUE CASIMIR,
f/k/a DOMINIQUE SMITH,

Plaintiff-Respondent,

v.

MAASI SMITH,

Defendant-Appellant.

———————————————

Submitted October 26, 2022 – Decided November 16, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket No. FM-08-0576-13.

Rebel Brown Law Group, LLC, attorneys for appellant (Marianne R. Brown, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant Maasi Smith appeals from a September 23, 2021 order which, among other things, denied his request for a downward modification of his child support obligation. We affirm.

We discern the following facts from the record. Plaintiff Dominique Casimir, f/k/a Dominique Smith, and defendant were married on August 18, 2001. Two children were born from the marriage. After twelve years of marriage, the parties divorced by way of a final judgment of divorce entered on September 9, 2013. The divorce decree incorporated the parties' Property Settlement Agreement (PSA) by reference. At the time the parties entered into the PSA—in 2013—defendant represented that his income was approximately $120,000 per year,[1] and plaintiff's income was approximately $50,000 per year.

[1] Defendant is a doctor who not only owns his own medical practice but, allegedly, derives income from multiple other business ventures and employment positions. Specifically, defendant owns a podiatric practice, known as Dr. Maasi J. Smith Foot Care and Smith Medical P.C. In addition to his medical practice, defendant is a medical professor at Temple University, an on-air contributor for FOX29 Philadelphia news and other television/radio outlets, Chief of Podiatry for Urban Health Initiatives, owns his own shoe line (Maasi Footwear), and has published books. Defendant is also a partner/owner of an entertainment/record label known as Think Nation Entertainment, L.L.C.

Article 4 of the PSA, as pertinent here, deals with "Child Related Issues." In Art. 4.1, the parties agreed to share joint legal custody of their children. Plaintiff, however, was to be the "parent of primary resident/primary caretaker."

Article 4.3 established child support, which the parties agreed to set at the above-guideline award of $2,200 per month[2] in exchange for plaintiff's "waiver of claim to alimony beyond the limited amount and term of one (1) year at $300.00 per month[,] as well as her waiver of equitable distribution on account of [defendant's] medical practice/related entities[,] and her waiver of retroactive relief to January 2012." At the time, the parties agreed that the child support award was "a reasonable approximation of the children's needs" and, should either party ever seek to alter that amount in the future, "the party who seeks to change the agreement shall have the burden of proof as to their needs."

The final relevant provision of the PSA, Art. 4.6, details how, and to what extent, each party would contribute towards their children's post-secondary education expenses. The specific terms are as follows:

> Parties had funded 529 Accounts. [Plaintiff] has approximately $50,000.00 set aside for [No.S.] in a New York 529 Plans to which both she and her family members contribute in lieu of other gifts. [Defendant]

[2] "Except during the month of August of each year, which the children shall spend with [defendant], and during such month of August each year, his support obligation shall be reduced to" $1,000 for that month.

has approximately $6,000.00 in a 529 Account for [N.S.] in a plan into which only he can make contributions. [Defendant] shall arrange for contributions to be able to be made by his or her parents. Notwithstanding the disparate contributions to the 529 Plans to date, and because of the importance of the college education issue to both parties, and in consideration of all the mutual promises and covenants set forth in this agreement, parties have agreed that, subject to the right of consultation and participation in the decision making process, that they shall equally share the college education expenses of their children as follows: The parent of primary resident and/or the child shall apply for scholarships, grants and subsidized or unsubsidized Stafford and Perkins (deferred) loans. After the application of scholarships, grants and Stafford or Perkins loans, the money in the current 529 Plans shall be applied "off the top". All contributions made to the 529 Plans after May 30, 2013 shall inure to the benefit of [defendant] if made by [defendant] or members of his family, and to [plaintiff] if made by [plaintiff] or members of her family. The credit shall apply at the time the child attends college. Parties agree that the fixed sum of $50,000.00 is the marital portion of [No.S]'s 529 Plan and the fixed sum of $6,000.00 is the marital portion of [N.S.]'s 529 Plan. All amounts in excess thereof shall be credited to the party who made the contribution, [plaintiff] to [No.S.]'s plan and [defendant] to [N.S.]'s which shall be where the contributions go in the future. The term "college education expense" shall include, but not be limited to, tuition, room and board or off-campus rental in an amount equivalent to room and board charges by the college, fees, books, and other required fees and insurances for the attendance of the child at the college or university. Parties shall likewise equally share in SAT preparation and college preparation and college selection (trips to visit college) costs subject to

> consultation as to the SAT course and college selection process. They agree that regardless of any change in the law to the contrary, that they shall remain equally responsible for their children's college education at least through the entry of an undergraduate degree and otherwise agree that emancipation shall be determined in accordance with New Jersey law in effect at the time that the issue arises.

On May 11, 2021, plaintiff filed a motion requesting, among other things, a court order: enforcing Art. 4.3 of the PSA, i.e., that "defendant immediately resume making full/complete and timely payments of his child support obligation"; requiring defendant to make a lump sum payment of his child support arrears;[3] and requiring defendant to provide other payments/reimbursements to plaintiff on behalf of the parties' children, pursuant to the PSA.

In response, defendant filed a cross-motion on June 10, 2021 requesting a downward modification of his child support obligation and, to the extent the modified obligation is owed, that the obligation be secured by life insurance. In support of his cross-motion, defendant alleged a substantial and permanent change in circumstances in various forms, including his financial hardship

[3] Plaintiff alleges that defendant's outstanding child support obligation from January 2020 through May 2021 totals $25,000.

imposed by COVID,[4] his increased parenting time with both children, and plaintiff's increased earnings.[5]

On September 23, 2021, the court held a hearing to entertain the parties' various motions. Defense counsel argued that a substantial change in circumstances was present and attributable to the fact that the couple's eldest daughter is now attending and living away at Howard University. In addition, defense counsel contended that defendant's alleged financial hardship was compounded by the fact that plaintiff now makes "significantly more" than defendant, a fact that allegedly required a plenary hearing to consider the possibility of a downward modification in defendant's child support obligations.

At the close of oral argument, the court found in plaintiff's favor, stating:

> I don't find a substantial permanent change in circumstances that would alter those obligations. [Defendant] has the ability to outperform what he has been doing. I know counsel's argument that he wasn't able to practice during the pandemic was made. I know I was able to visit all of my doctors during the pandemic, dentists, they were open.
>
> I don't know what his individual circumstance was; however, I do still find that he has the ability to

[4] Defendant's individual tax return for 2020 alleges an income of $64,208.00 for the year. Smith Medical, P.C.'s tax return, defendant's business, alleges an income of $45,078.00 for 2020.

[5] Plaintiff's paystubs show that she now earns roughly $250,000 annually.

> outperform what is reported by counsel now. I don't find a significant permanent change in circumstances that would alter that obligation, that $2,200 a month obligation. I've ordered him to pay the arrears on that. I'm not going to order it be in a lump sum. I find that overly burdensome.

In addition, the judge found that the parties' eldest child going away to college on a full-time basis and living on campus did not amount to a per se change in circumstances that would warrant modification or review of defendant's child support modification. In so doing, the judge recognized that expenses usually rise when a child goes away to college.

Ultimately, the motion judge denied defense counsel's request for a plenary hearing for want of a showing of a substantial permanent change in circumstances that would warrant a change in the child support obligation. As for the $36,000.00 in arrears owed by defendant, the judge indicated that they should be paid at an additional $200 per month, which would be reflected in his order.

An order memorializing the motion judge's decision was entered that same day. On October 6, 2021, defendant appealed. On appeal, defendant presents the following arguments:

POINT I

RESPONDENT'S 400% INCREASE IN INCOME REPRESENTS A SUBSTANTIAL AND PERMANENT CHANGE IN CIRCUMSTANCES THEREFORE THE COURT'S DENIAL OF DEFENDANT'S APPLICATION TO MODIFY OR REVIEW APPELLANT'S SUPPORT OBLIGATION MUST BE REVERSED.

POINT II

THE COURT ABUSED ITS DISCRETION BY FAILING TO ORDER A PLENARY HEARING SINCE WHEN A CHILD LEAVES THE CUSTODIAL PARENT'S HOME TO LIVE AT COLLEGE, AN AUTOMATIC CHANGE OF CIRCUMSTANCES HAS OCCURRED, THEREFORE, THE COURT'S ORDER DENYING SAME AND AWARDING ARREARAGES MUST BE REVERSED.

POINT III

SINCE THE CIRCUMSTANCES WHICH EXISTED AT THE TIME OF THE PARTIES' DIVORCE HAVE MATERIALLY CHANGED, THE ABOVE-GUILDELINES SUPPORT AWARD MUST BE REVIEWED.

POINT IV

SINCE THE PARTIES' COMBINED INCOME NOW EXCEEDS $187,200.00 ANNUALLY A PLENARY HEARING AND RECALCULATION OF THE SUPPORT OBLIGATION IS NECESSARY AS A MATTER OF LAW.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We accord deference to Family Part judges due to their "special jurisdiction and expertise in family matters." Id. at 413. The "general rule" is that their findings are binding on appeal so long as they are "supported by adequate, substantial, credible evidence." Id. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We "exercise [our] original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter." Ibid. (quoting Rova Farms, 65 N.J. at 484). Thus, we will not "disturb the 'factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms, 65 N.J. at 484). However, "[w]here our review addresses questions of law, a trial judge's findings are not entitled to the same degree of deference[;] . . . [t]he appropriate standard of review for conclusions of law is de novo." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (citations omitted).

In divorce matters, "'the use of consensual agreements to resolve marital controversies' is particularly favored." Weishaus v. Weishaus, 180 N.J. 131, 143 (2004) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). Such

agreements are accorded "prominence and weight" and "should not be unnecessarily or lightly disturbed." Konzelman, 158 N.J. at 193-94. However, like all child support orders, an agreement allocating the financial responsibility to support the parties' children, which is incorporated into a divorce judgment, is not immutable; it may be modified upon a showing of substantially changed circumstances and related showing of need. Lepis v. Lepis, 83 N.J. 139, 146 (1980).

Under the terms of the subject PSA, the parties agreed that $2,200 per month was a reasonable approximation of the children's needs and that the party who seeks to change the agreement—here, defendant—shall have the burden of proof as to a change in those needs. It is also worth noting that the terms of the parties' PSA—specifically the above-guideline child support award—were expressly agreed to by defendant in exchange for plaintiff's agreement to waive considerable rights, namely her rights to certain alimony monies, equitable distribution of defendant's medical practice/related entities, and retroactive relief.

Under N.J.S.A. 2A:34-23, the Family Part has the authority to modify child-support obligations "from time to time as circumstances may require." Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015)

(quoting N.J.S.A. 2A:34-23). "Our courts have interpreted this statute to require a party who seeks modification to prove 'changed circumstances'[.]" Id. at 536 (alteration in original) (quoting Lepis, 83 N.J. at 157); Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012) ("A party seeking modification of his or her child support obligation has the burden of demonstrating a change in circumstances warranting an adjustment. Any decision must be made in accordance with the best interests of the children."). The Family Part's consideration of "changed circumstances" includes the change in the parties' financial circumstances, whether the change is continuing, and whether the parties' agreement "made explicit provision for the change." Spangenberg, 442 N.J. Super. at 536 (quoting Lepis, 83 N.J. at 152). We evaluate changed circumstances based on facts existing at the time the prior agreement or order was entered. Donnelly v. Donnelly, 405 N.J. Super 117, 127-28 (App. Div. 2009).

A decision whether to modify child support is reviewed for an abuse of discretion. J.B. v. W.B., 215 N.J. 305, 325-26 (2013); see Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (emphasizing our "great deference to discretionary decisions of Family Part judges."). The Family Part has substantial discretion in granting or denying applications to modify such orders

and, generally, we will defer to the Family Part's decision on "whether a plenary hearing must be scheduled." Jacoby, 427 N.J. Super. at 123. Moreover, deference is particularly warranted where, as here, the evidence "involves questions of credibility." Cesare, 154 N.J. at 412.

Here, the judge found that defendant failed to carry his burden under the PSA, i.e., the judge did not find that plaintiff's increase in income represented a substantial, permanent change in circumstances that would alter defendant's child support obligations in light of a change in the needs of their children. The motion judge made this determination after finding that defendant has the ability to "outperform what he has been doing," which clearly involves the credibility of defendant's evidence. Moreover, the record reflects a sense of skepticism about many of the losses reported on defendant's tax returns, as well as a lack of transparency on the defendant's behalf in the financial information he provided to the court.

In addition, the motion judge found that no change in circumstances resulted from the parties' eldest daughter attending and living away at college. Moreover, the parties' PSA separately addressed obligations for post-high school education (Art. 4.6) and child support (Art. 4.3) in grave detail, a distinction recognized by our precedent. See Jacoby, 42 N.J. Super at 121 ("The

payment of college costs differs from the payment of child support for a college student.").

Therefore, after a careful review of the record and relevant law, we find that the motion judge did not abuse his discretion in denying defendant's request to modify or review his child support obligation.

To the extent that we have not addressed defendant's remaining arguments, we find that they lack sufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(1)(E).

Affirmed.