SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0535-20

MONICA TRIM,

Plaintiff-Respondent,

v.

BRAD ZULAUF,

Defendant-Appellant.

Submitted January 5, 2022 – Decided April 25, 2022

Before Judges Gooden Brown and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Somerset County, Docket No. FM-18-1087-15.

DiLorenzo & Rush, attorneys for appellant (Kenneth R. Rush, of counsel and on the briefs).

Monica Trim, respondent pro se.

PER CURIAM

In this post-judgment matrimonial appeal, defendant Brad Zulauf appeals an order granting plaintiff Monica Trim's motion to enforce litigant's rights as

to his failure to pay child support and other child-related expenses; denying his cross-motion to reduce his child-support obligations and to terminate his obligation to pay fifty-percent of other child-related expenses and to make certain payments to plaintiff; and awarding plaintiff half of the attorney's fees she had requested. Discerning no abuse of discretion, we affirm.

I.

The parties were married on July 1, 2005. They have two sons, one born in 2008 and the other in 2009. The parties separated in February 2010. On August 27, 2015, they executed a Divorce Settlement Agreement (DSA), which was incorporated into a September 23, 2015 Judgment of Divorce.

In the DSA, the parties, neither of whom were then represented by counsel, agreed defendant would make monthly child-support payments of $1,000 until their children turned twenty-five. Defendant also agreed to pay fifty percent of other child-related expenses, which included summer-camp tuition, unpaid medical expenses, educational-support needs, secondary-education costs, and extracurricular activities and to keep the children on his medical- and dental-insurance plans. The parties also agreed defendant would pay plaintiff's monthly cell-phone and yearly car-insurance bills. The DSA did not provide for any alimony payments. The Judgment of Divorce confirmed

"[a]limony is waived." At the time of the divorce, defendant was an employee of the Rahway Public School system, earning $58,183 per year.

In a January 16, 2020 email, defendant informed plaintiff he was "in the negative financially," confirmed one of his child-support payment checks had "bounced," and advised her he would "not be able to keep paying [her] $1,000 a month" but would send her what he could. On January 28, 2020, plaintiff responded, telling him his situation did not "change the needs of [their] children and [she was] not in the position financially to make up the difference." She recognized "as the children have gotten older . . . there are things on both sides of [their] original agreement that may not work as well as [they] had intended." She offered to meet to "determine if [they could] come to a mutual agreement that works moving forward." She also noted she had not received a support payment. Defendant responded later that day, reminding her he had told her he could not "make the $1,000 child support payment" and that he would send her what he could. In a March 16, 2020 email, plaintiff told defendant she had not received any child-support payments from him since December, he was then $2,500 behind in child support, and he had not made the cell-phone or car-insurance payments, further increasing his total arrears. She confirmed he had declined her offer to meet to discuss adjustments to their agreement. She asked

him to "make a payment for back support due" and offered again to meet to avoid court action.

About five months later, after mediation efforts were unsuccessful, plaintiff moved to enforce litigant's rights pursuant to Rule 1:10-3, based on defendant's failure to pay child-support arrears, his share of certain child-related expenses, and defendant's cell-phone and car-insurance bills. She also sought an award of attorneys' fees.[1] Plaintiff supported her motion with a certification in which she testified defendant had paid only $400 of the $7,000 he was required to pay in child support in the prior seven months.

Defendant cross-moved, seeking an order reducing his child-support obligation and terminating his obligation to pay plaintiff's cell-phone and car-insurance bills and his share of his children's "extra-curricular and/or entertainment-related expenses." In a certification in support of his cross-motion, defendant testified that as an elementary-school teacher and lacrosse coach, he earned approximately $73,290 annually. He stated he had "experienced severe financial hardship for the past two years trying to maintain [his] monthly child support and other recurring financial obligations,"

[1] Plaintiff sought other relief regarding parenting time, which we do not address because neither party appealed the portion of the order regarding that aspect of plaintiff's motion.

referencing specifically difficulties in paying the mortgage on his recently-purchased house, cashing out IRA accounts, selling his fiancée's engagement ring, and relying on his parents for financial assistance. He asserted his living and personal expenses exceeded his monthly income and that he had been out of work that summer because of the COVID-19 pandemic. Pointing out the DSA has no end date for his obligation to pay plaintiff's cell-phone and car-insurance bills, defendant contended it seemed "shameful, cruel, and highly unjust" for him to pay those bills given the parties' "respective financial circumstances." He asserted he had paid $800 of the child support he owed.

In reply, plaintiff pointed out defendant's purported financial difficulties had begun around the time he had purchased a new house with his fiancée. She argued, among other things, that reducing defendant's child-support obligation would be illogical given his income was approximately $15,000 more than his income had been when he had agreed to the $1,000 monthly obligation in the DSA.

After oral argument, the motion judge issued a twenty-one-page written order and opinion granting plaintiff's motion to enforce litigant's rights as to defendant's obligation to pay his child-support and child-related expenses; denying plaintiff's motion as to defendant's obligation to pay her cell-phone and

car-insurance bills; awarding plaintiff one-half of her requested attorney's fees; and denying defendant's cross-motion in its entirety. The motion judge held defendant had not provided "a convincing reason" as to why he could not meet the child-support obligation he had agreed to in the DSA. The judge denied the aspect of plaintiff's motion concerning her cell-phone and car-insurance bills because plaintiff had not demonstrated clearly which bills defendant had not paid. After setting forth the law on attorney-fee awards, the judge found defendant had "unilaterally ceased child support payments without adequate justification or explanation" and ordered defendant to pay half of the fees requested by plaintiff.

Citing Lepis v. Lepis, 83 N.J. 139, 157 (1980), the motion judge found defendant had not "established that his current financial situation [was] more than a temporary circumstance" and had failed to provide "much explanation as to why his monthly income is now insufficient to cover both his living expenses and his child support obligation when he previously paid his monthly support obligation." Noting plaintiff's assertion defendant's purported financial difficulties began when he purchased a new house and that his current income was higher than his income was when the parties initially set child support, the motion judge denied defendant's request to reduce his child-support obligation.

The judge rejected defendant's contention his agreement to pay plaintiff's cell-phone and car-insurance bills was de facto alimony. Finding no indication the DSA was the product of fraud, the judge held defendant would continue to pay the portions of the bills covering plaintiff's expenses. The judge expressly permitted defendant to move again regarding the car-insurance bills if he could provide proof the premium had increased since the Judgment of Divorce had been entered.

On appeal, defendant argues the motion judge erred: (1) by awarding litigant's-rights relief without determining defendant's violation was "willfully contumacious" or that defendant had the capacity to comply; (2) awarding plaintiff attorney's fees without examining plaintiff's financial condition and the factors set forth in Rule 5:3-5(c); (3) declining to reduce defendant's child-support obligation and terminate his obligation to pay other child-related expenses without performing a child-support guideline calculation; and (4) declining to terminate defendant's obligation to pay plaintiff's cell-phone and car-insurance bills when the DSA did not provide an expiration date for that obligation.

II.

"We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). We reverse "only when a mistake must have been made because the trial court's factual findings are 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice . . . .'" Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We review de novo questions of law. Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020). We review under an abuse-of-discretion standard a trial court's child-support-modification order, J.B. v. W.B., 215 N.J. 305, 325-26 (2013), and an order granting a motion to enforce litigant's rights, N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017). An abuse of discretion occurs where the trial court's decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor,

171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

Settlement of matrimonial disputes is "encouraged and highly valued in our system." Quinn v. Quinn, 225 N.J. 34, 44 (2016). Settlement agreements, including settlement agreements in matrimonial actions, are governed by basic contract principles and, as such, courts should discern and implement the parties' intent. J.B., 215 N.J. at 326. "The court's role is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the 'expressed general purpose.'" Pacifico v. Pacifico, 190 N.J. 258, 266 (2007) (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)). "[A] court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." Quinn, 225 N.J. at 45.

"'[S]trong public policy favor[s] stability of arrangements' in matrimonial matters." Konzelman v. Konzelman, 158 N.J. 185, 193 (1999) (quoting Smith v. Smith, 72 N.J. 350, 360 (1977)); see also Quinn, 225 N.J. at 44. However, a court is "authorized to modify alimony and support orders 'as the circumstances of the parties and the nature of the case' require." Halliwell v. Halliwell, 326 N.J. Super. 442, 448 (App. Div. 1999) (quoting N.J.S.A. 2A:34-23). A party seeking a modification of alimony and child support obligations must

demonstrate changed circumstances "as would warrant relief." Lepis, 83 N.J. at 157; see also Spangenberg, 442 N.J. Super. at 536. A temporary change of circumstances does not warrant relief. Lepis, 83 N.J. at 151; see also Donnelly v. Donnelly, 405 N.J. Super. 117, 128 (App. Div. 2009). Changes of circumstances that may warrant modification include: "an increase in the cost of living, an increase or decrease in the income of the supporting or supported spouse, cohabitation of the dependent spouse, illness or disability arising after the entry of the judgment, and changes in federal tax law." Quinn, 225 N.J. at 49 (quoting J.B., 215 N.J. at 327). If the moving party makes a prima facie showing of changed circumstances, the court may order the parties to disclose information regarding their financial status to enable the court to make an informed decision as to "what, in light of all the [circumstances] is equitable and fair." Lepis, 83 N.J. at 158 (quoting Smith, 72 N.J. at 360).

A Rule 1:10-3 hearing "comes about because an obligor has failed to comply with an order." Schochet v. Schochet, 435 N.J. Super. 542, 548 (App. Div. 2014). "The objective of the hearing is simply to determine whether that failure was excusable or willful, i.e., the obligor was able to pay and did not." Ibid. If necessary, a trial court may hold a hearing to determine whether a party's non-payment was excusable. Ibid. If a court is satisfied the non-compliant party

was capable of following the order and willfully failed to comply, it may impose appropriate sanctions. Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012). "Sanctions under Rule 1:10-3 are intended to coerce a party's compliance." Ibid. "The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under" Rule 1:10-3 and "[i]n family actions, the court may also grant additional remedies as provided by R[ule] 5:3-7." R. 1:10-3.

An award of attorney's fees rests within the discretion of the trial judge. McGowan v. O'Rourke, 391 N.J. Super. 502, 508 (App. Div. 2007). Therefore, "a reviewing court will disturb a trial court's award of counsel fees 'only on the rarest of occasions, and then only because of a clear abuse of discretion.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

We affirm the trial court's decision in its entirety because we perceive no abuse of discretion in any aspect of the decision. Instead of moving for a modification of the Judgment of Divorce, which incorporated the parties DSA and the financial obligations to which he had agreed less than five years previously, defendant unilaterally declared in an email he would no longer pay the agreed-upon $1,000 monthly child-support payment but would send plaintiff

only what he decided he could send her. Even if she had the financial ability to agree to his declaration, plaintiff did not have the legal right to do so. "It is fundamental that the right to child support belongs to the child and may not be waived by a custodial parent." L.V. v. R.S., 347 N.J. Super. 33, 41 (App. Div. 2002); see also Gotlib v. Gotlib, 399 N.J. Super. 295, 305 (App. Div. 2008). Defendant also chose not to honor other financial commitments he had made in the DSA, specifically, other child-related expenses and plaintiff's cell-phone and car-insurance bills. When plaintiff responded and asked to meet to discuss a possible mutual agreement, defendant rejected that offer and repeated his declaration he would no longer make the monthly $1,000 child-support payments but would send what he could. He ended up sending over the course of the next several months only $800, a fraction of what he was obligated to pay under the Judgment of Divorce.

That defendant violated the Judgment of Divorce is undisputed. Defendant contends the motion judge failed to make a finding that his violation was so "willfully contumacious" as to justify relief under Rule 1:10-3. We disagree. When he held defendant had "unilaterally ceased child support payments without adequate justification or explanation," had not provided "a convincing reason" as to why he could not meet the child-support obligation he

had agreed to in the DSA only five years previously, and had failed to provide "much explanation as to why his monthly income is now insufficient to cover both his living expenses and his child support obligation when he previously paid his monthly support obligation," especially considering his income had increased significantly since the Judgment of Divorce, the motion judge made the necessary findings to support granting relief pursuant to Rule 1:10-3. Moreover, those findings were supported by sufficient, credible evidence in the record.

Defendant did not seek a modification of the Judgment of Divorce until after plaintiff had sought to enforce it. He supported his cross-motion with bald assertions of financial difficulties, unsupported by any documentary evidence. The change of circumstance established by the documentary evidence submitted was a $15,000 increase in his salary since the Judgment of Divorce – demonstrating a reason not to modify downwards his child-support or terminate his other agreed-upon obligations. He referenced purchasing a house but did not otherwise provide proof he had experienced any cost-of-living increases since entry of the Judgment of Divorce or proof of any other change of circumstance warranting a modification of his child-support obligations. As the motion judge found, defendant, who provided no comparison of his expenses at

the time of the divorce and his expenses at the time he filed his cross-motion, did not give a sufficient explanation as to why his monthly income was no longer sufficient to cover both his living expenses and child-support obligations. Defendant asserted he had not had his usual summer employment opportunities during the summer of 2020 due to the COVID-19 pandemic, but as the motion judge found, that circumstance was a temporary situation not meriting a change in his support obligations. Defendant failed to make a prima facie showing of changed circumstances, and the motion judge properly did not order discovery, a plenary hearing, a child-support guideline calculation, or a modification of defendant's obligations under the Judgment of Divorce.

We perceive no error in the judge's denial of the aspect of defendant's cross-motion concerning his contractual obligation to pay plaintiff's cell-phone and car-insurance bills. The judge correctly rejected defendant's contention that those payments constituted de facto alimony and applied basic contract principles to decide this aspect of defendant's cross-motion. "[F]air and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed." Smith, 72 N.J. at 358; see also Quinn, 225 N.J. at 44-45. The judge found the DSA was not the product of fraud. Defendant did not contend his agreement to pay plaintiff's cell-phone and car-insurance

bills was fraudulently induced or was unfair at the time the parties entered the DSA. Defendant did not explain what rendered that agreement unfair five years later.

Viewing the decision as a whole, we see no abuse of discretion in the motion judge awarding plaintiff half of the attorney's fees she had requested. The judge, who knew this case having decided previous motions, had before him not just plaintiff's motion to enforce litigant's rights but also defendant's cross-motion. He knew from the parties' submissions they had nearly equivalent incomes. He correctly found defendant had not established a change of circumstances meriting a modification in his payment obligations under the Judgment of Divorce. He had granted much of the relief plaintiff had requested and denied all of the relief defendant had sought. With that information in mind and reviewing the applicable court rules, the judge awarded plaintiff half of her requested fees. We see no abuse of discretion in that decision.

Affirmed.