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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2393-20**

LISA SULLIVAN,

Plaintiff-Respondent,

v.

MICHAEL SULLIVAN,

Defendant-Appellant.

Submitted October 11, 2022 – Decided November 21, 2022

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Ocean County, Docket
No. FM-15-1075-16.

Horn Law Group, LLC, attorneys for appellant (Jeff J.
Horn, of counsel; Jessica R. Carosiello, on the brief).

Rehrer & Rehrer, attorneys for respondent (Victoria L.
Rehrer, on the brief).

PER CURIAM

In this appeal of a post-judgment order, we are asked to consider whether the Family Part erred in declining to modify and reduce defendant's alimony and child support obligations and in compelling defendant to disclose information related to a particular business. We conclude the trial court did not abuse its discretion when it found defendant did not make a prima facie showing of changed circumstances because defendant Michael Sullivan's pleadings were deficient and any reduction in income, he experienced was temporarily caused by disruptions related to the pandemic; they did not affect his ability to earn income or seek alternative sources of income. Additionally, although the court found no prima facie showing of changed circumstances, it still had the authority to enforce its own orders and, on plaintiff Lisa Sullivan's cross-motion to enforce litigant's rights, appropriately ordered discovery of financial information defendant omitted from his Case Information Statement (CIS) relevant to his ability to comply.

The parties were divorced pursuant to a March 28, 2018 judgment of divorce (JOD) incorporating the parties' marital settlement agreement (MSA). The MSA addresses custody and child support for the two children born of the marriage, limited duration alimony, and equitable distribution. During the

marriage, Michael¹ started a business known as "Club Metro Franchising, LLC" (Club Metro), of which he is a fifty percent co-owner, with a business partner who is not a party to this litigation. Michael sold and franchised gyms through this venture, and at the time of divorce, Michael was receiving royalty distributions from approximately seventeen franchisees. Pursuant to the MSA, Michael retained all businesses established during the marriage, "including but not limited to Club Metro Financing, Club Source, Direct Impact, Union Club, Green Island Builders (a construction firm) and other ancillary businesses."

The MSA, provided that Michael shall pay alimony to Lisa for a limited duration of nine years: \$7,000 per month in alimony for five years, and \$6,000 per month for the final four years. The alimony payments were calculated based upon Michael's reported income of \$250,000 per year, and Lisa's imputed income of \$50,000. Michael is also obligated to pay child support in the amount of \$309 per week, which was calculated using the Child Support Guidelines. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, www.gannlaw.com (2023).

¹ For convenience, we refer to the parties by their first names because they have the same last name. We mean no disrespect.

Michael's income was determined using an analysis conducted by a forensic accountant who served as a joint expert during the parties' divorce. He determined Michael's businesses were worth \$1,500,000, and Michael's fifty-percent ownership was worth \$750,000. He also conducted a cash flow analysis where he determined Michael's annual average income was \$262,585 gross and \$231,867 net.²

On August 9, 2019, upon Lisa's motion, the court found Michael violated litigant's rights by failing to comply with certain provisions in the MSA, regarding equitable distribution and real property. The court specifically found Michael had failed to make a lump sum equitable distribution as set forth in the MSA.

On July 16, 2020, Michael filed a motion seeking a reduction of his alimony and child support obligations. In his CIS, Michael asserted "Covid 19 has caused the closing of all my fitness franchise [locations] in NJ, 10 Locations." Michael reported his 2019 income on his CIS as \$219,252 gross and \$201,693 net. Michael also reported year-to-date unearned income of \$49,000.

² The joint expert's cash flow analysis was incorporated into the JOD and is part of the undisputed record.

The trial court observed Michael listed only the following on his CIS: certified "Part D" monthly expenses were \$375 for his phone and transportation, and "\$0" for his shelter expenses; "Schedule C" personal expenses totaled \$2,070.95, comprised mostly of food and medical insurance. "Part E" of the CIS did not disclose any bank accounts or real property owned. He certified his net worth, after liabilities, was "\$384,600."

Lisa filed a cross-motion on October 1, 2020, seeking enforcement of the MSA, certain payments, and post-judgment discovery because, at the time, Michael was in arrears to her for \$22,796.66. In response to defendant's cross-motion for discovery, Michael volunteered he would provide all documentation regarding his income. Lisa alleged Michael closed his construction business, Green Island Builders, and started a new venture, Blue Star Construction to hide income and seek reduction of his support obligations based upon changed circumstances. Lisa alleged Michael started Blue Star Construction with a significant other,³ who was also an employee of Club Metro.

³ The transcript reflects the unnamed third party to this litigation, Michael's significant other, may be his fiancée. Although Michael's significant other is also the biological mother of another child of his, born during these proceedings, she is not a named party and did not participate in the proceedings.

On November 23, 2020, the court denied defendant's motion to decrease alimony and child support payments, found him in violation of litigant's rights for certain violations of the MSA, and compelled him "to disclose any and all information related to his new business, Blue Star Construction." The order noted: "Plaintiff states this business is owned by defendant and his wife. There is no information in defendant's CIS about Blue Star Construction." The order also required "[Michael] to disclose all information regarding any PPP loans . . . or other COVID related support/assistance received by his or any of his businesses." Michael was also ordered to bring arrears current within thirty days.

On December 14, 2020, Michael filed a motion for reconsideration of the November 23, 2020 order, disclosing with it for the first-time information about two Paycheck Protection Program (PPP) Loans he received in May 2020, totaling approximately \$111,000. Michael also retained the former joint expert to conduct another "cash flow analysis" for calendar year 2020. The expert issued a report on March 17, 2021, estimating Michael's cash flow was \$137,082 gross and \$122,161 net income. The report qualified the "analysis was limited to the information provided us."

On March 26, 2021, after entertaining oral argument, the court denied reconsideration of the November 23, 2020 order. The court found Michael failed to meet the reconsideration standard envisioned by in Rule 4:49-2, specifically noting deficiencies in his case information statements, which omitted "costs, his living expenses, Schedule A, B and C, he had nothing in there because he's being supported by his [significant other]." The court observed, regarding the original motion decided in November 2020, "I could have summarily disregarded his application because it did not meet the requirements of Rule 5:5-4 nor N.J.S.[A.] 2A:34-23, which sets forth the information that has to be provided in the first instance if you come to the [c]ourt asking for the relief he's asking for." The court added on reconsideration, "I still don't have a fully completed [CIS]."

The order entered denied Michael's motion for reconsideration and granted Lisa's motion to enforce the November 23, 2020 order compelling discovery from Blue Star Construction and ordering Michael to bring arrears current within thirty days.⁴

Michael filed this appeal.

⁴ Reduction in support obligations based on changed circumstances and discovery are the only issues Michael briefs on appeal.

An appellate court reviews orders denying reconsideration for abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016); Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (stating reconsideration is "a matter within the sound discretion of the [c]ourt") (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). A court abuses its discretion "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

The Family Part has authority under N.J.S.A. 2A:34-23 to modify alimony and child support awards. Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015). The statute provides that alimony and child support orders "may be revised and altered by the court from time to time as circumstances may require." N.J.S.A. 2A:34-23. "Our courts have interpreted this statute to require a party who seeks modification to prove [']changed circumstances[.][']" Spangenberg, 442 N.J. Super. at 536 (alteration in original) (quoting Lepis v. Lepis, 83 N.J. 139, 157 (1980)).

Each motion for modification of alimony or child support "rests upon its own particular footing and the appellate court must give due recognition to the wide discretion[,] which our law rightly affords to the trial judges who deal with these matters." Ibid. (alteration in original) (quoting Martindell v. Martindell, 21 N.J. 341, 355 (1956)). "While an 'abuse of discretion . . . defies precise definition,' we will not reverse the decision absent a finding the judge's decision 'rested on an impermissible basis[,] considered 'irrelevant or inappropriate factors[,]'" ibid. (alterations in original) (quoting Flagg 171 N.J. at 571-72), or "failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." ibid. (quoting Storey v. Storey, 373 N.J. Super. 464, 479 (App. Div. 2004)).

Assessment of changed circumstances requires a judge to examine the parties' current situation and the situation when the order was entered. Beck v. Beck, 239 N.J. Super. 183, 190 (App. Div. 1990) ("[I]t is clear that the changed-circumstances determination must be made by comparing the parties' financial circumstances at the time the motion for relief is made with the circumstances which formed the basis for the last order fixing support obligations."). To establish changed circumstances, a "party seeking modification has the burden of showing such 'changed circumstances' as would warrant relief from the

support or maintenance provisions involved." Lepis, 83 N.J. at 157 (quoting Martindell, 21 N.J. at 353).

We find no abuse of discretion in the trial court's determination that Michael did not make a prima facie showing of changed circumstances, particularly because he omitted critical financial information from his CIS, only some of which he ultimately provided, and only after being ordered to do so.

Although Michael asserts the trial court did not properly weigh his "drop in income," which was "more than temporary," and argues that should have resulted in consideration of at least "temporary remedies pursuant to N.J.S.A. 2A:34-23(m)," Michael did not provide enough financial information to demonstrate he had less available income because of the incomplete CIS.

Michael's argument that he did not need to demonstrate he sought alternative employment is likewise without merit. At oral argument, Michael's counsel argued the cases distinguishing "temporary" from permanent change in circumstances did not contemplate a pandemic affecting an obligor's ability to work. The court acknowledged "his business may have been affected, the gym business. That doesn't mean he can't go into the construction business." Michael filed his initial motion to reduce his obligations on July 16, 2020, twenty-seven months after the parties entered the MSA, and in the midst of a pandemic.

Michael acknowledged the mandatory shutdown of gyms which affected his business was relaxed to a reduced-capacity requirement by the time the initial motion was argued in November 2020. He also had extensive prior experience in the construction industry and conceded his significant other is the owner of Blue Star Construction. His failure to provide any evidence he sought alternative employment is fatal to his claim.

New Jersey courts have roundly "rejected requests for modification based on circumstances which are only temporary." Lepis, 83 N.J. at 151. Moreover, "what constitutes a temporary change in income should be viewed more expansively when urged by a self-employed obligor." Larbig v. Larbig, 384 N.J. Super. 17, 23 (App. Div. 2006). In Larbig, the court held although "[t]here is . . . no brightline rule by which to measure when a changed circumstance has endured long enough to warrant modification of a support obligation[,] the motion judge did not abuse discretion when it found a self-employed obligor's reduction in income was only temporary, and thus did not warrant recalibration. Ibid. The court reasoned, in the case of a self-employed obligor in particular, such an obligor is "in a better position to present an unrealistic picture of his or her actual income than a W-2 earner." Ibid.

The court did not abuse discretion by finding Michael's claims of financial hardship suspect. Although Michael is a W-2 earner, he is also self-employed as a part owner of Club Metro Franchising, the entity from which he receives a salary, and the entity that employs his significant other, the only other employee paid throughout the pandemic. He provided an incomplete CIS to the trial court regarding the PPP loans received by Club Metro. He may have demonstrated less income, depending upon how much of the PPP loans he paid to himself and his only other employee/significant other, but he also demonstrated significantly reduced expenses compared to the initial calculation of alimony and child support because he had no shelter expenses or other costs. The court did not abuse its discretion denying the application for reduction in support obligations on these grounds. Larbig, 384 N.J. Super. at 23.

Notwithstanding his position that full discovery and a plenary hearing was warranted based on a prima facie showing of changed circumstances, Michael alternatively argues the court imprudently ordered discovery after there was no finding of changed circumstances.⁵ He argues "with the rejection of a plenary hearing and requested relief, there is no means to an end because the matter is

⁵ This argument is raised for the first time on appeal. At trial, Michael stated "if they want to do discovery, let them do discovery. I don't have a problem with that. But give us some relief, judge."

closed" and, therefore, "it would be impossible for any relevant information to be submitted to assist the court in its decision." Id. at 29.

Michael claims he is not the owner of Blue Star Construction, but conceded it is owned by his significant other. Lisa's cross-motion sought to enforce Michael's pre-existing support obligations independently of Michael's motion to modify them, and because the court granted her motion, it could not analyze Michael's ability to comply without a complete CIS. See Gulya v. Gulya, 251 N.J. Super. 250, 253-54 (App. Div. 1991) (citing R. 5:5-4). The financial information regarding Blue Star Construction was required pursuant to Rule 5:5-4(a)(4).

Michael echoes points from his discovery-related arguments in asserting he cannot lawfully be compelled to "produce documents of a business he has no interest in." Lisa argues because Michael is shielding his true financial situation from the court, she needs the discovery to verify or discredit the issue in dispute: whether Michael's financial situation is as precarious as he represents. She argues the fact Michael's significant other is one of two remaining employees "fully responsible for operating his other gymnasium businesses raises concern about how she could also be operating her own construction company." If Michael truly inures no financial benefit from Blue Star Construction, he may

submit a certification to the court, which would suffice to respond to the discovery demand. However, Michael's position, that he has violated court orders because he cannot afford to comply, is an issue relevant to his ability to pay and one which Lisa, having prevailed on her motion, is entitled to explore.

We, therefore, find no reason to disturb the orders of the Family Part.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION