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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2552-20**

LAWRENCE GUBLER,

Plaintiff-Respondent,

v.

STEPHANY GUBLER,

Defendant-Appellant.

Submitted March 24, 2022 – Decided April 5, 2022

Before Judges Alvarez, Mawla, and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-1112-19.

Ziegler, Resnick & Epstein, attorneys for appellant
(Steven M. Resnick and Jonathan H. Blonstein, on the
briefs).

Phillips Nizer LLP, attorneys for respondent (Stephanie
F. Lehman and Fara K. Rodriguez, on the brief).

PER CURIAM

Defendant Stephany Gubler appeals from an April 1, 2021 order denying her motion to amend a default judgment of divorce (JOD) incorporating the parties' mediated settlement agreement, and alternatively seeking discovery and a plenary hearing. We affirm.

Defendant and plaintiff Lawrence Gubler were married for twenty-three years and had three children who were ages twenty, eighteen, and fifteen at the time of entry of the JOD on December 11, 2018. At the time of divorce, plaintiff was the Chief Financial Officer (CFO) of an investment and lending firm and earned approximately \$400,000 per year. He also served as a board member of a sports drink company in which the parties invested \$435,000 and received equity shares. Plaintiff provided tax advice to the company and was also compensated with profit interest shares. Defendant earned a business degree and worked on Wall Street for several years before leaving the workforce to become a homemaker and raise the children. At the time of divorce, plaintiff was fifty-four and defendant fifty years of age.

In August 2018, the parties retained a divorce mediator. They signed a mediation retainer agreement, stipulating they would provide "full disclosures of all information relevant to the issues to be negotiated" and "produce any and all pertinent documents" requested by the mediator or either party. They agreed

to retain neutral experts if an appraisal of their assets and income was required. The retainer agreement also "strongly urged" the parties to obtain separate legal counsel during the mediation process.

Mediation occurred on August 10 and 31, 2018, resulting in a sixteen-page memorandum of understanding (MOU) prepared by the mediator. The MOU stated it was not a binding contract unless the parties took action to make it binding. To that end, it stipulated "[t]he parties recognize their right to review the terms with separate and independent legal counsel, however, they have specifically decided to waive their right to do so and enter into an [a]greement without the benefit of separate and independent counsel." The MOU further stated the parties would have to execute a section entitled "Waiver of Attorney and Agreement" to make the MOU binding.

The waiver read as follows:

The parties have reviewed the terms and conditions of this agreement with the mediator and by themselves and may or may not have consulted with legal counsel with regard to the terms and conditions of this as well as their rights and obligations legally from the marriage. Nonetheless, they have chosen to accept the terms and conditions hereof without further assistance or any assistance of legal counsel. They represent that at no time were they under undue influence or duress, and that, knowing all of the undertakings set forth herein and knowing all of their rights, they freely and voluntarily enter into this

agreement, waiving their respective rights to have the [c]ourt decide each issue, with or without the assistance of counsel, and substituting their judgment for the judgment of the [c]ourt. They understand that they have the right to have a full disclosure of all of the assets, liabilities and income of the other under the supervision of independent attorneys and the [c]ourt, and with their respective rights to further discovery. They agree to be bound by this agreement as if it were an order of the [c]ourt.

Relevant to the issues raised on appeal, the MOU required plaintiff to pay limited duration alimony for four and one-half years at \$100,000 per year. There was no direct child support payments for the parties' youngest child but the parties were obligated to pay for the child's expenses during their own parenting time. Plaintiff was solely responsible for the youngest child's extracurricular activities costs and all three children's college educations, including room and board, tuition, fees, books, and transportation after exhaustion of the children's 529 accounts; and the children's health insurance and unreimbursed medical expenses until their emancipation. The parties agreed to share the children's auto insurance expense.

The MOU attached a balance sheet prepared by plaintiff, which the parties concurred "sets forth the agreed upon distribution of assets. . . . The balance sheet is based on actual assets and some estimated values of assets" as of August 1, 2018. The balance sheet valued the marital estate at \$11,668,044, from which

defendant would receive an equitable distribution of \$5,822,221 and plaintiff \$5,845,824. The equitable distribution represented an equal division of the value of the parties' real estate, five investment accounts, retirement accounts, and personalty. Defendant's equitable distribution included \$3,095,113 in cash and plaintiff received \$1,479,888 in cash. The parties divided the equity shares equally in-kind. Each retained two of the four vehicles they owned.

The MOU stated plaintiff received profit interest shares from the sports drink company "[a]s compensation for serving as a board member and tax consulting." The profit interest shares were governed by Restricted Membership Interest Agreements (RMIA's), which stated the shares were offered under the company's "Equity Incentive Plan" and were "in consideration for services performed or to be performed for the [c]ompany by [plaintiff.]" The RMIA's contained a provision stating non-vested shares would be forfeited if a "[t]erminating [e]vent" occurred, which included "termination of [plaintiff's] [s]ervice [r]elationship with the [c]ompany for any reason or no reason."

The parties agreed to "equally share the vested profit interest shares . . . and that [plaintiff] shall retain all unvested profit interest shares." The MOU cited the balance sheet, which noted there were four tranches of profit interest shares granted, namely: 10,000 shares granted on July 30, 2014 (tranche one);

5,000 shares granted on July 1, 2015 (tranche two); 5,000 shares granted on June 1, 2017 (tranche three); and 5,000 shares granted on April 15, 2018 (tranche four). Tranches one and two vested over four years at a rate of twenty-five percent per year and tranches three and four vested over five years at the following percentages: ten in year one; fifteen in year two; and twenty-five in years three through five.

As of the date of the MOU, tranche one, seventy-five percent of tranche two, and ten percent of tranche three had vested, totaling 14,250 shares. The balance sheet noted the parties received \$885,926 to date for the profit interest shares, which they deposited into their Fidelity account. The Fidelity account provision of the MOU explained the parties acknowledged this sum "represented [fifteen percent] of unvested and vested shares. Thus if [plaintiff] leaves [the company] and is required to repay [it] for the unvested shares, [defendant] shall contribute equally to this repayment"

The MOU contained a dispute resolution provision. The parties agreed "that in the event they cannot resolve any dispute between them, they will participate in a[t] least one mediation session before either party brings an application to the [c]ourt"

On November 30, 2018, the parties executed the waiver and the MOU and plaintiff filed the complaint for divorce. The same day, defendant executed an acknowledgement of service of the complaint and waiver stating: "I hereby waive my right under the Rules of Court to respond to the annexed [c]omplaint. . . . The plaintiff and I have entered into a written agreement, and I prefer that this matter proceed as expeditiously as possible on a default basis." The parties divorced the following month.

Sometime in early 2020, defendant expressed dissatisfaction with the MOU and requested mediation. The parties attended a half hour mediation session on May 8, 2020, but were unable to resolve the dispute.

In January 2021, defendant filed a post-judgment motion to amend the JOD to equally distribute the unvested profit interest shares, for open durational alimony, and to increase alimony to \$150,000 per year. Alternatively, the motion requested the court find plaintiff in violation of litigant's rights for not attending mediation and order the parties to return to mediation. The motion also asked the court to set a discovery schedule and a plenary hearing to resolve the alimony and equitable distribution issues.

Defendant certified the MOU was unconscionable because it was the product of financial information plaintiff alone controlled and presented during

the mediation. She claimed plaintiff used his superior financial knowledge to dictate the outcome of the mediation and she "obtained new information which confirmed that [p]laintiff intentionally and knowingly concealed at least hundreds of thousands of dollars [and as much as several million dollars pending the current valuation of the unvested shares" She certified "[p]laintiff recently told [her] . . . the shares will likely be sold for anywhere between \$500 to \$650 per share, in which case the unvested shares retained by . . . [p]laintiff would be worth anywhere between \$5,000,000 and \$7,000,000."

Defendant claimed there was no exchange of discovery during mediation other than the balance sheet plaintiff prepared and "nowhere in the [balance sheet] is there any mention of the values of the unvested shares." She asserted plaintiff knew there was a value to the unvested shares "at the time of the mediation and purposefully excluded same from his disclosures." According to defendant, plaintiff had an advantage in the negotiations because he was a trained CPA and successful CFO while she was "inexperienced in financial matters, and especially ignorant as to [the] family's finances" She noted her attorney received a spreadsheet prepared by plaintiff in October 2020 valuing the unvested shares at \$694,470.

Defendant claimed the length of the parties' marriage warranted open durational alimony. She asserted the alimony amount was unjust because it represented only twenty-five percent of plaintiff's gross income and she could not meet her needs or the marital lifestyle. Further, the lack of direct child support for the youngest child and the requirement each party pay the child's expenses during parenting time demonstrated the MOU's unfairness.

Defendant argued "[t]here was never a determination that [she] entered into the [MOU] freely and voluntarily or that [she] understood its terms" because the matter proceeded in default, and she was never voir dired. Further, she lacked the advice of counsel.

Plaintiff's opposition to the motion denied that he pressured or coerced defendant into signing the MOU or that she was a financial novice. In addition to defendant's business degree, plaintiff pointed out she was "an accomplished financial services accountant" who worked for Lehman Brothers and Fidelity Investments and served as a "personal financial assistant" to the founder of a hedge fund. He noted defendant "oversaw all the family's finances" during the marriage.

Plaintiff described the negotiation process in detail and noted it was amicable. He "provided several documents to [the mediator] and [d]efendant[.]"

including operating agreements evidencing the unvested shares" He explained defendant was not entitled to the unvested shares because "[t]he purpose of [the RMIA]s is to incentivize those who perform future services to the [c]ompany. . . . The [i]nterests vest over a specified period of time . . . to ensure that recipients are incentivized to perform services at a high level throughout the vestment period." He pointed out the MOU provision requiring defendant repay the value of any unvested shares deposited into their Fidelity account in the event he left the company or was terminated as evidence the parties understood the unvested shares were compensation for his "post-divorce efforts and continued employment" with the company. Plaintiff stated:

The profit sharing was awarded to ensure that I consistently perform throughout the vesting period—a period which extends well past the date of the [MOU]/divorce. The [c]ompany intended the shares to vest for future services and not as a form of deferred compensation attributable to the award dates. These unvested shares are contingent on my commitment to the employment and remaining employed by the [c]ompany.

Plaintiff noted the RMIA's were provided to defendant and the mediator, and the issue was discussed because the MOU expressly granted plaintiff the unvested shares. Plaintiff explained "[a]t the time of the [MOU], these shares were not vested and did not have a readily ascertainable value." Furthermore,

when he provided the spreadsheet in October 2020, ascribing a value to the shares, he "used a theoretical value based on potential future events[.]" namely that he would still be alive, working for the company through the vestment periods and "that [the company] would potentially consummate the sale of the last [eighty-five percent] of the company by the end of 2022." He stated: "[T]his value was simply an estimation made by me years later, based on potential events." He denied telling defendant the shares were worth \$500 to \$650 apiece.

Plaintiff asserted defendant's unconscionability argument was rebutted by the fact she benefitted from the MOU by receiving her equitable distribution, nearly two years of alimony, as well as the significant expenses paid for the children, including their college educations. Moreover, the court could not assess defendant's claims regarding the alleged unfairness of the alimony because she did not include a Case Information Statement (CIS) with her motion. He noted he agreed to return to mediation and participated in one session.

Defendant's reply certification repeated her claims alleging unfairness of the agreement. She claimed a CIS was unnecessary because "[t]he [c]ourt does not need to see a [CIS] to know that a four-year alimony term on a twenty-four[-]year marriage is facially unconscionable at the time the [MOU] was signed." She also disputed that the parties participated in post-judgment mediation

because there was no signed mediation retainer and the parties only had one thirty-minute phone call with the mediator.

The motion judge heard lengthy oral argument and found "no proof" to support defendant's allegation that she was "bullied and intimidated into entering . . . mediation without counsel" by plaintiff. He noted the terms of the MOU and the acknowledgement she signed "certify[ing] . . . that there was no force, threat, or coercion in getting her to sign this document." He also pointed out defendant's experience in the financial sector.

Further, citing M.G. v. S.M., 457 N.J. Super. 286 (App. Div. 2018), the judge concluded the evidence established the profit interest shares were "being granted, not because of the work that had been done by [plaintiff] in the past, but . . . in order to incentivize him to work . . . in the future and to use his best efforts in order to help the business." The judge found no proof plaintiff "intentionally and knowingly concealed as much as several million dollars pending the current valuation of the unvested shares." He rejected defendant's claim she did not know the value of the unvested shares until she received the October 2020 spreadsheet because the number of unvested shares could be discerned from the balance sheet and plaintiff had ascribed a fair market value to the shares contained in all four tranches. The judge found no material issues

of fact warranting a hearing because the MOU expressly contained "at least three indications that there were these profit interest [shares] that were being held."

The judge found the agreement enforceable because "[t]here was complete and full disclosure" and "no proof of overreaching in the negotiations[,] " which occurred at arms-length with "a very well[-]regarded mediator." Furthermore, the equitable distribution of the marital assets was "basically [fifty-fifty]."

The judge rejected defendant's request to revisit the alimony provision of the MOU because defendant did not file a CIS. As a result, the judge could not discern defendant's needs or the marital standard of living. He concluded plaintiff "can't engage in a modification without having any information. There's no financial disclosure. There's no showing of changed circumstances." Rejecting plaintiff's argument the alimony duration was itself proof of unconscionability, the judge noted the substantial equitable distribution, that defendant was advised to speak to an attorney about the settlement, and could have appeared in court and contested entry of the JOD.

The judge found the terms of the settlement were clearly worded and there was no "objective information to refute what was put in writing" or an explanation why plaintiff waited two years to file the motion. He declined to second guess the terms of the MOU.

The judge denied defendant's request to find plaintiff in violation of litigant's rights for refusing to attend mediation. After reviewing the mediator's billing statements, he concluded plaintiff complied with the MOU by contacting and addressing the dispute with the mediator. He noted the MOU did not require mediation for a set amount of time and both parties "admit that they did have a conversation" with the mediator.

Defendant raises the following points on appeal:

POINT I

THE TRIAL COURT ERRED BY DENYING [DEFENDANT'S] REQUEST FOR A PLENARY HEARING AND DISCOVERY GIVEN THE CONFLICTING MATERIAL ISSUES OF FACT AND CONFLICTING CERTIFICATIONS.

POINT II

THE TRIAL COURT ERRED BY DENYING [DEFENDANT'S] REQUEST TO AMEND AND CORRECT THE PARTIES' [JOD] INCORPORATING THE PARTIES' [MOU].

POINT III

THE TRIAL COURT ERRED BY DENYING THE [DEFENDANT'S] REQUEST FOR A PLENARY HEARING AND DISCOVERY GIVEN THE NATURE OF THE UNVESTED SHARES IN QUESTION WHICH REQUIRED A PLENARY HEARING TO DETERMINE WHETHER THE SHARES WERE ATTRIBUTABLE TO POST

DIVORCE EFFORTS AS WELL AS WHETHER THERE WAS CONSIDERATION FOR [DEFENDANT'S] WAIVER OF OPEN DURATIONAL ALIMONY.

POINT IV

[DEFENDANT] DID NOT HAVE THE INFORMATION NECESSARY TO MAKE A VALID WAIVER OF HER RIGHTS.

POINT V

THE TRIAL COURT ERRED BY DENYING [DEFENDANT'S] REQUEST TO REQUIRE THE PARTIES TO ATTEND MEDIATION GIVEN THE PARTIES' [MOU] WHICH REQUIRED THE PARTIES TO ATTEND PRIVATE MEDIATION TO RESOLVE ANY ISSUE ARISING OUT OF THE [MOU].

POINT VI

AS AN ISSUE OF FIRST IMPRESSION, GUIDANCE FROM THE COURT IS REQUIRED AS TO DISCOVERY AND COUNSEL WAIVERS WHERE THERE IS NO PENDENTE LITE TRIAL COURT INVOLVEMENT.

Rule 4:43-3 states the court may set aside a "judgment by default . . . in accordance with Rule 4:50." "Rule 4:50-1 provides for relief from a judgment in six enumerated circumstances." In re Est. of Schiffner, 385 N.J. Super. 37, 41 (App. Div. 2006). Rule 4:50-1 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." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009). "Rather, the rule is a carefully crafted vehicle intended to underscore the need for repose while achieving a just result." Ibid.

Rule 4:50-1(f) allows a party to petition for relief from a final judgment or order for "any . . . reason justifying relief." A movant must show that the enforcement of the judgment "would be unjust, oppressive or inequitable." Eaton v. Grau, 368 N.J. Super. 215, 222 (App. Div. 2004) (quoting Harrington v. Harrington, 281 N.J. Super. 39, 48 (App. Div. 1995)). Relief is granted sparingly and only in "truly exceptional circumstances." DEG, LLC, 198 N.J. at 270 (quoting Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 122 (1977)).

We review a decision on a Rule 4:50-1 motion for an abuse of discretion. 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.'" Id. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). If a judge makes a discretionary decision but acts under a

misconception of the applicable law or misapplies the law to the facts, we "need not extend deference." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999).

Having considered the arguments raised on appeal, we affirm substantially for the reasons expressed by the motion judge. There was no objective evidence of overreaching or that defendant was coerced, under duress, deprived of the right to counsel or discovery, rendering the MOU unconscionable. We likewise affirm the judge's findings that the alimony, equitable distribution, and the overall settlement were fair and equitable and that he could not address an alimony modification without a CIS. His denial of the request to compel further mediation also was not an abuse of discretion. We add the following comments to further elucidate why the claims relating to the unvested profit interest shares are unpersuasive.

Defendant likens this matter to Addesa v. Addesa, 392 N.J. Super. 58, 73 (App. Div. 2007), where the court invalidated a mediated settlement finding the plaintiff withheld information regarding the value of a marital business and misled the defendant. Like the spouse in Addesa, defendant asserts she was materially misled about the true value of the unvested profit interest shares.

In Addesa, neither party was represented by counsel during mediation. Id. at 66. The parties agreed to an equal equitable distribution and the defendant received \$153,569 as her share of a business operated by the plaintiff, representing one-half of the book value. Id. at 70-71. However, five months after the divorce, the business sold for approximately sixteen million dollars. Id. at 71. The defendant challenged the settlement, alleging she was misled regarding the value of the business. Id. at 68-69. The trial court concluded the settlement was unconscionable because the discrepancy in the value of the plaintiff's business did not align with the parties' intent to equally divide their assets. Id. at 70-71. We affirmed the trial court's finding of unconscionability. Id. at 75.

Addesa is inapposite because here neither party made an affirmative representation regarding the value of the unvested shares. The parties did not place a value on the shares during mediation and waived their right to the advice of counsel or valuation of the asset. This leads us to the second and more important reason Addesa is distinguishable: the parties agreed the unvested shares were not subject to equitable distribution.

As we have stated before, an equitable distribution does not require an equal distribution of marital assets. M.G., 457 N.J. Super. at 295. Moreover, in M.G. we held

- (1) Where a stock award has been made during the marriage and vests prior to the date of complaint it is subject to equitable distribution;
- (2) Where an award is made during the marriage for work performed during the marriage, but becomes vested after the date of complaint, it too is subject to equitable distribution; and
- (3) Where the award is made during the marriage, but vests following the date of complaint, there is a rebuttable presumption the award is subject to equitable distribution unless there is a material dispute of fact regarding whether the stock, either in whole or in part, is for future performance.

[Id. at 302.]

We explained that "the analytical framework is not when the stock was received, but rather, the efforts required for it to vest." Id. at 297. If the stock becoming payable is contingent on a party's post-divorce employment efforts, then the stock is not subject to equitable distribution. Id. at 297-98. The party seeking to exclude a stock award from equitable distribution bears the burden of producing objective evidence to prove "the employer intended the stock to vest for future services and not as a form of deferred compensation attributable to

the award date." Id. at 302. We described the types of proofs the court could consider, including the incentive plan document and any other factors or circumstances surrounding the grant of the incentive award. Id. at 301.

Plaintiff rebutted the presumption of equitable distribution because: defendant did not contradict his certification explaining the company's reasons for granting the profit interest shares; the express terms of the MOU excluded the shares from equitable distribution; and he produced the RMIs showing the unvested shares were contingent upon his continued performance and service to the company. For these reasons, the MOU was not unconscionable because it did not deprive defendant of her share of the marital assets as the unvested shares were not a marital asset subject to equitable distribution.

Finally, to the extent we have not addressed an argument raised on the appeal, it is because it lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION