SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2875-20

JOSEPH I. OFUNGWU,

Plaintiff-Appellant,

v.

ESTHER UGWU,

Defendant-Respondent.

———————————————————

Submitted March 9, 2022 – Decided April 7, 2022

Before Judges Gilson and Gooden Brown.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Warren County, Docket No. FM-21-0206-10.

Joseph Ofungwu, appellant pro se.

Esther Ugwu, respondent pro se.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff/ex-husband appeals from the May 5, 2021 Family Part order denying his request for a reduction in

child support payments based on changed circumstances. We vacate the order and remand for reconsideration.

We glean these facts from the record. The parties married in 1995 and have one child born of the marriage. When the parties divorced in 2010, child support was established based on plaintiff's 2009 annual salary of $82,000, as well as his 2010 year-to-date income, as reflected in his June 15, 2010 Case Information Statement (CIS). In a March 11, 2020 order, plaintiff's child support obligation was continued until April 10, 2023.

On April 8, 2021, plaintiff moved to reduce his then child support obligation of $193 per week[1] to $138.46 per week, and other relief not pertinent to this appeal. Relying on a reduction in income, plaintiff certified that in 2011, he lost his full-time job "in engineering" and has been working part-time positions since then because he has been unable to find a comparable full-time position. According to plaintiff, in 2020, he had a gross income of $44,182.93 from two part-time jobs – one as an "hourly" Wal-Mart employee and the other as an "as needed" online adjunct faculty instructor at Southern New Hampshire University. In accordance with Rules 5:5-2 and 5:5-4, plaintiff attached to his

[1] The amount reflected the automatic biennial cost-of-living adjustment (COLA), effective April 19, 2021, required by Rule 5:6B.

moving papers his current CIS, his 2010 CIS filed when the divorce was finalized, his 2020 income tax returns, his W-2's, and his most recent pay stubs.

Applying the principles articulated in Lepis v. Lepis, 83 N.J. 139, 158 (1980), requiring a "showing of changed circumstances" to warrant modification, the judge denied the motion, finding plaintiff "failed to provide the [c]ourt with any proof of permanent and substantial changed circumstances." The judge stated that contrary to plaintiff's assertion that "his income is less than the income on which his current child support obligation is based," plaintiff's "updated financials indicate that his gross annual income for 2020 is $44,182.93, which is $2,274.32 higher than his income in 2010, when his child support obligation was first calculated."

The judge further explained:

> Although [p]laintiff asserts that his current child support was calculated based on his past income of $82,000, this assertion is belied by the record. In fact, [p]laintiff's 2010 income of $41,908.61 was quite similar to his current earnings.

In this ensuing appeal, plaintiff argues the judge erred in denying his motion for a child support reduction. Plaintiff contends the judge "apparently made a mathematical error that misled the judge to conclude that there has not been a material change in [his] income between 2010 when the child support

payment[] . . . was originally established and the present time." Plaintiff asserts the error caused the judge to reach the erroneous conclusion that there was "no basis for reducing the child support payments."

We review a Family Part judge's "decisions granting or denying applications to modify child support" under an abuse of discretion standard. J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App.Div.2012)). "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 questions of law . . . de novo." Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020).

Based on our review of the record, we agree with plaintiff that in reaching his conclusion that plaintiff failed to meet his "burden of demonstrating a

substantial and permanent change in circumstances," see Lepis, 83 N.J. at 157, the judge mistakenly compared plaintiff's 2020 gross annual income of $44,182.93, reflected in plaintiff's March 8, 2021 CIS, with the $41,908.61 year-to-date "gross income net of taxes" reflected in plaintiff's June 15, 2010 CIS. In other words, the judge appears to have compared plaintiff's gross income for all of 2020 with his net year-to-date income for half of 2010. Accordingly, we vacate the order and remand for reconsideration of plaintiff's modification motion.

However, we take no position on the merits of the application once the judge has correctly evaluated the underlying factors. See N.J.S.A. 2A:34-23 (authorizing courts to modify child support orders "as the circumstances of the parties and the nature of the case" require); Jacoby, 427 N.J. Super. at 118-19 (explaining "demonstration of a significant change in financial circumstance is the first step when determining whether modification of a previously set child support award is warranted," and "[o]nce a change in circumstances has been demonstrated, the court next determines the appropriate level of support"); Halliwell v. Halliwell, 326 N.J. Super. 442, 448 (App. Div. 1999) (noting "[c]urrent earnings are not the sole criterion to establish a party's obligation for support" and "[t]he potential earning capacity of an individual, not his or her

actual income, should be considered when determining the amount a supporting party must pay").

Reversed and remanded for reconsideration in accordance with this opinion. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION