SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3195-20

ANTHONY RICCA,

Plaintiff-Appellant,

v.

JENNIFER L. RICCA,

Defendant-Respondent.

Submitted November 7, 2022 – Decided December 13, 2022

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FM-11-0305-18.

Villani & DeLuca, PC, attorneys for appellant (Michael C. Ayres, on the briefs).

Jennifer L. Ricca, respondent pro se.

PER CURIAM

Plaintiff Anthony Ricca appeals from a January 25, 2021 order denying his motion to modify his alimony and child support obligations.[1] We affirm.

I.

The parties were married in 2007 and divorced in 2018. They have three children together, ages nine, twelve and fourteen; the oldest child is "non-verbal" and "intellectually disabled."

In August 2018, the parties executed a consent order that resolved their custody and parenting time issues. Under the terms of the consent order, defendant was designated the children's primary residential parent and plaintiff was afforded weekend parenting time, which included twenty-six overnights per year.

On the same day the parties entered into the consent order, they executed a Property Settlement Agreement (PSA) witnessed by their respective attorneys. Pursuant to the PSA, plaintiff agreed to pay $342 per week in child support, $385 per week in alimony for ten years as of the date of the PSA, and all of the

[1] We note the January 25 order also reserved decision on certain parenting time issues pending mediation. Thus, it did not become ripe for appeal until June 29, 2021, when the motion judge entered an order confirming plaintiff withdrew any remaining requests for relief.

children's childcare costs "as needed." The PSA also reflected plaintiff's support obligations were based on him having a gross earned income of $120,000 per year and defendant earning $35,000 per year. Additionally, the PSA provided, in part, that its

> provisions . . . and their legal effect have been fully explained to . . . the parties by their respective counsel . . . . and that each fully understands . . . and has been fully informed as to his or her legal rights and obligations and each party acknowledges and accepts that this Agreement is, in the circumstances, fair and equitable, and that it is being entered into freely and voluntarily after having received such advice.

In December 2020, plaintiff moved to modify his support obligations.[2] Having retained new counsel, plaintiff argued his child support payments should be lowered because there was "an error in the calculation of . . . child support in [the PSA]" and he "was not provided credit for the payment of alimony, or for the [d]eductions from [his] income as a state employee." He submitted a revised child support guidelines (CSG) worksheet which purported "to take into consideration all these appropriate deductions." Based on the CSG worksheet

[2] Although plaintiff's December 2020 motion set forth additional requests for relief, and defendant cross-moved for other relief, we address only those requests related to plaintiff's appeal.

plaintiff attached to his moving papers, he contended he should pay $187 per week for child support.

Plaintiff also certified he was entitled to a decrease in his alimony and child support obligations because his income had "dropped precipitously" after the parties divorced. He claimed he earned approximately $69,000 in 2020, "which [was] nearly half of the income that [he] received previously," and that he was "no longer afforded the overtime opportunities" he enjoyed as a corrections officer in the past. Plaintiff further asserted overtime pay "accounted for nearly $30,000" of the "extra income" he earned when the parties negotiated his support obligations. He also submitted a letter from his supervisor to confirm the loss of overtime pay. Additionally, plaintiff provided various medical records to the court and certified he "suffer[ed] from a number of medical issues" affecting his "ability to work additional hours."

Defendant filed a cross-motion in opposition to plaintiff's motion, objecting to any decrease in support. She certified when his child support obligations were calculated in 2018, "the court imputed income to [her] as [she] was not employed at the time." She also stated that to her recollection, "the original [CSG]" figure was based on "shared parenting time," with plaintiff receiving credit for fifty-two overnights per year, rather than the twenty-six

overnights provided under the PSA. Further, defendant argued that because plaintiff often canceled or cut short his parenting time following the divorce, child support "should be [re]calculated [using a] 'sole parenting time' worksheet."

Additionally, in response to plaintiff's contention that child support was based on errors set forth in a CSG worksheet, defendant certified it was "difficult . . . to determine if there was any sort of error on the original [CSG worksheet] as plaintiff ha[d] not attached the original worksheet as an exhibit to his motion." She stated she was "willing to provide the court with whatever information [was] necessary to verify the accuracy of the original amount ordered."

Regarding plaintiff's claim that overtime work would no longer be available to him, defendant provided the court with documents she "obtained from an Open Public Records request," showing corrections officers who worked at plaintiff's detention facility had greater opportunities for overtime in 2020 than in prior years, and that plaintiff appeared to have "voluntary[il]y decrease[d his] salary." Additionally, she highlighted that plaintiff's 2019 tax return showed he received income from gambling while allegedly being treated for his gambling addiction. She also asserted that because plaintiff's annual base

salary was $85,000, he "clearly [was] not working every day . . . he [was] eligible . . . to come in below his base." Defendant stated that in her "experience," plaintiff would "take[] numerous 'unpaid' days off in order to gamble" and she posited he "care[d] more about his own vices than . . . supporting" the children.

The trial court heard argument on the parties' cross-applications in January 2021. On January 25, 2021, the motion judge placed her decision on the record, denying without prejudice any decrease in plaintiff's support obligations. The judge specifically recalled handling the parties' divorce in 2018 and noted the judgment of divorce (JOD) "was submitted on the papers" so "there was no discussion or questioning of the litigants with regard to their settlement." Nevertheless, the judge remembered "discussing this case with the attorneys at the time," and that "plaintiff had to step up to the plate to assume additional responsibilities," considering "defendant had to find a place to live" with the parties' three children, one of whom was "severely handicapped." The judge also recollected that while the divorce was pending, "plaintiff had an addiction to gambling," had taken "out a pension loan and that money was used for gambling," and "the parties ended up losing their house to foreclosure."

Further, the judge noted that just a little over two years after the parties divorced, plaintiff wanted to modify the parties "financial arrangement," even though he failed to adequately "address the issues that he raise[d] about the mistake in the [CSG] and in the calculation of child support and alimony." Further, the judge stated the documentation plaintiff submitted from his employer about the loss of overtime pay was "a one-paragraph letter sent 'to whom it may concern' . . . . [a]nd it doesn't have . . . plaintiff's name on it, it's not in a certification and the court is not considering it." On the other hand, the judge found the document defendant submitted showing "the amount of overtime" paid at the juvenile detention facility where plaintiff worked had "gone up in 2020 from 2019."

Moreover, the judge questioned plaintiff's claim that he was "not even earning his base salary" of approximately $85,000 and found his 2019 tax return showed he "clearly . . . continues to gamble, much to the chagrin of this court." After noting defendant's argument that plaintiff was losing pay because he was "tak[ing] too many days off," the judge rhetorically stated, "why would . . . he earn almost $20,000 less than his base pay? There's something that doesn't add up here." Additionally, the judge stated she was "not satisfied by the

documentation submitted by the plaintiff that he . . . suffered a loss of overtime through no fault of his own."

Turning to plaintiff's claim that health issues impacted his earnings, the judge found he "contracted COVID and he was out [of work] for the month of December [2020]" and he also was treated for "abdominal pain" earlier in the year. In "read[ing] all the medical records," the judge concluded there was a diagnosis "at one point of a small bowel obstruction. But there's really nothing of significance. And the plaintiff didn't address whether or not he had sick days and he gets paid sick days."

Based on the judge's findings about plaintiff's current circumstances, as well as her observation that defendant's updated Case Information Statement (CIS) showed she was grossing $24,000 per year, rather than the $35,000 figure imputed to her under the PSA, the judge determined there was no basis to reduce plaintiff's child support or alimony payments.

II.

On appeal, plaintiff newly argues the motion judge "erred when she failed to list this matter for a plenary hearing when there were controverted facts."[3] We disagree.

"Appellate courts accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should we interfere[.]" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)). "We will reverse only if we find the trial judge clearly abused his or her discretion[.]" Clark v. Clark, 429 N.J. Super. 61, 72 (App. Div. 2012). However, "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017) (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

[3] To the extent plaintiff raises additional arguments in his reply brief, we do not address them. See Pannucci v. Edgewood Park Senior Hous. — Phase 1, LLC, 465 N.J. Super. 403, 409-10 (App. Div. 2020) (citing State v. Smith, 55 N.J. 476, 488 (1970) (noting the impropriety of raising new issues in a reply brief)).

It also is well established that matrimonial settlement agreements are "'entitled to considerable weight with respect to their validity and enforceability' in equity, provided they are fair and just" because they are "essentially consensual and voluntary in character[.]" Dolce v. Dolce, 383 N.J. Super. 11, 20 (App. Div. 2006) (quoting Petersen v. Petersen, 85 N.J. 638, 642 (1981)). However, courts retain the equitable power to modify support provisions at any time. Lepis v. Lepis, 83 N.J. 139, 145 (1980).

"Whether [a support] obligation should be modified based upon a claim of changed circumstances rests within a Family Part judge's sound discretion." Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006) (citations omitted); see also Storey v. Storey, 373 N.J. Super. 464, 470 (App. Div. 2004). Each individual motion for modification is particularized to the facts of that case, 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." Larbig, 384 N.J. Super. at 21 (quoting Martindell v. Martindell, 21 N.J. 341, 355 (1956)). The trial court's decision on support obligations should not be disturbed unless we

> conclude that the trial court clearly abused its discretion, failed to consider all of the controlling legal principles, or must otherwise be well satisfied that the findings were mistaken or that the determination could

> not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole.
>
> [Heinl v. Heinl, 287 N.J. Super. 337, 345 (App. Div. 1996) (citation omitted).]

The moving party must demonstrate a permanent change in circumstances from those existing when the prior support award was fixed. See Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009) (finding a party moving for alimony modification must demonstrate changed circumstances since the preceding alimony order). "When the movant is seeking modification of an alimony award, that party must demonstrate that changed circumstances have substantially impaired the ability to support himself or herself." Lepis, 83 N.J. at 157. On the other hand, "[w]hen the movant is seeking modification of child support, the guiding principle is the 'best interests of the children.'" Ibid. (citations omitted).

"Courts have consistently rejected requests for modification based on circumstances which are only temporary or which are expected but have not yet occurred." Lepis, 83 N.J. at 151 (citations omitted). Premature filing of a Lepis motion will justify its denial on the ground that the change has not been shown to be a permanent condition or of lasting duration. Larbig, 384 N.J. Super. at 22-23.

After a party makes a showing of changed circumstances relating to alimony or child support, the trial judge must determine if a plenary hearing is required. Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). "[A] plenary hearing is only required if there is a genuine, material and legitimate factual dispute." Segal v. Lynch, 211 N.J. 230, 264-65 (2012); see also Lepis, 83 N.J. at 159 (holding the moving party must clearly demonstrate the existence of a genuine issue as to a material fact "before a hearing is necessary" because without such a standard, courts would impracticably be obligated to hold hearings for every requested modification). In short, the necessity of a plenary hearing must be demonstrated by the movant. Hand, 391 N.J. Super. at 106. We review a trial court's denial of a plenary hearing for an abuse of discretion. See Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015).

Governed by these principles, we discern no reason to disturb the denial of plaintiff's request for a modification of his support obligations. Indeed, we are persuaded the motion judge correctly determined plaintiff's proofs were insufficient to establish a prima facie case of changed circumstances under Lepis. For the same reasons, we decline to conclude the judge erred in failing to conduct a plenary hearing to address plaintiff's claim that he was entitled to a decrease in his support payments.

Here, the record reflects the child support figure of $342 per week "was based upon [plaintiff grossing] $120,000 . . . plus $35,000 [imputed income to defendant], plus her alimony of $21,000." Despite this plain language in the PSA, plaintiff argues, as he did before the trial court, that he is entitled to a modification of child support due to errors contained in a CSG worksheet he claims was used to calculate his child support obligation. Yet he failed to supply the allegedly flawed worksheet to the trial court or provide a statement from his prior counsel confirming his assertions of error.

We also note that although plaintiff certified to the judge that his "attorney [ran] a subsequent child support guideline [worksheet] to take into consideration all the[] appropriate deductions and it seems the appropriate child support amount should be $187 per week," plaintiff mistakenly relied on a shared parenting worksheet to support his argument. Stated differently, the August 2018 consent order afforded plaintiff only twenty-six overnights with the children per year, so any updated calculations under the CSG should have been conducted using a sole parenting worksheet.[4] Moreover, the shared parenting

[4] Under the CSG, to qualify for a shared parenting arrangement, the parent of alternative residence must have at least two overnights with the children each week, or the equivalent of twenty-eight percent of the yearly overnight visits. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules,

worksheet plaintiff submitted with his December 2020 motion was based on plaintiff having fifty-two overnights per year, double the amount of overnights allowed under the consent order. Also, the updated worksheet reflected plaintiff was single, grossed $120,000 per year, and had no dependents − information at odds with other data he provided to the court. Given these circumstances, and considering the plain language of the PSA, the fact the parties had the benefit of counsel when negotiating the terms of the PSA, and the motion judge recalled plaintiff was compelled to "step up" and "assume additional responsibilities" when the parties negotiated the PSA, we are satisfied the judge properly rejected plaintiff's request to modify his child support obligation based on the updated, flawed CSG worksheet he provided.

Similarly, we agree with the judge that plaintiff failed to demonstrate he was entitled to a modification of his support obligations due to an alleged loss of overtime or because of his brief health issues. In short, the documentation plaintiff provided was insufficient to show he would be permanently precluded from receiving overtime pay or that any medical problems he suffered in 2020

Appendix IX-A to R. 5:6A, ¶ 14(c)(2), www.gannlaw.com (2022). Here, plaintiff's overnight parenting time falls far below what is required for a shared parenting arrangement. Therefore, plaintiff's reliance on his proposed shared parenting worksheet is misplaced.

were other than temporary. As we have suggested, "support, whether set by court order or agreement, [may] be modified upon a showing of substantial, non-temporary changes in ability to support oneself or pay support." Gordon v. Rozenwald, 380 N.J. Super. 55, 67-68 (App. Div. 2005) (citation omitted).

Our conclusion that the judge properly rejected plaintiff's assertions of a deterioration in his financial circumstances is further bolstered by the fact that plaintiff's January 2018 CIS showed the parties' joint lifestyle budget was only $4,111 per month, yet his updated CIS from November 2020 reflected his net monthly budget, exclusive of his support obligations, increased to $7,512, or $90,144 per year. Such a substantial increase in plaintiff's budget does little to advance his argument that he has suffered a substantial, permanent change in circumstances. Indeed, as we have previously noted, where a payor has suffered a reduction in income, that person generally must "demonstrate how he or she has attempted to improve . . . diminishing circumstances." Donnelly, 405 N.J. Super. at 130 n.5. If a payor continues to live lavishly, a showing of a substantial change in circumstances is unlikely. Id. at 130-31.

In sum, we agree with the judge that plaintiff did not establish a prima facie case of changed circumstances warranting a reduction in his support obligations. Therefore, he was not entitled to a plenary hearing.

To the extent we have not addressed any other arguments raised by plaintiff, it is because they are without 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