

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3574-20**

R.C.,¹

Plaintiff-Respondent,

v.

B.C.,

Defendant-Appellant.

Submitted April 28, 2022 – Decided May 12, 2022

Before Judges Mitterhoff and Alvarez.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FD-02-1178-17.

B.C., appellant pro se.

Respondent has not filed a brief.

PER CURIAM

¹ We use the parties' initials in order to preserve their anonymity. See R. 1:38-3(d)(12).

Defendant, B.C., appeals from an August 3, 2021, Family Part order denying his motion for modification of the current parenting time schedule, and for downward modification of his support obligation for two children in plaintiff R.C.'s custody. The court granted plaintiff's cross-motion for enforcement of the order but denied her request for counsel fees. For the reasons stated by the judge, we affirm.

The hearing was conducted via Zoom. While the judge was rendering her decision, defendant repeatedly interrupted, as he had throughout the proceeding, despite being asked not to do so. The judge then muted defendant's speaker.

Although not entirely clear from the record, it appears an order suspending defendant's parenting time contingent upon a psychiatric evaluation was entered in an earlier Department of Child Protection and Permanency proceeding involving the family, which defendant has appealed. The appeal was pending when this matter was heard. For that reason, the judge dismissed the parenting time aspect of the application in compliance with Rule 2:9-1(a).

The parties entered into a child support agreement in 2017 that was subsequently incorporated into a court order. The implementation of an automatic cost of living increase (COLA) added \$27 in additional support to defendant's \$400 weekly obligation. The judge rejected defendant's argument

that the withdrawal of his consent constituted a change of circumstances that warranted review of the child support obligation and a hearing, or required plaintiff to file financial information with the court. The judge also disagreed with defendant's additional point that the COLA automatic increase was unconstitutional. Furthermore, she considered his claim that since COVID his income had been halved to be a temporary change, that did not establish a basis for modification. The judge also noted defendant provided "[n]ot a stitch" of evidence that he had made efforts to supplement his income for COVID-related losses. Since he failed to establish a prima facie case of changed circumstances for any reason, the modification application was denied without a hearing or further review.

The court granted plaintiff's cross-motion seeking enforcement of the support order, including the lawfully imposed COLA adjustment. Plaintiff's application for counsel fees was not supported by an affidavit of services. Thus, the judge denied that application.

Defendant on appeal raises the following points:

POINT I

APPELLANT-FATHER WAS DENIED A
CONSTITUTIONAL RIGHT TO DUE PROCESS, A
FAIR HEARING AND EQUAL ACCESS TO THE
COURT DURING THE VIRTUAL COURT SESSION

ON AUGUST 3, 2021 WHEN [THE JUDGE] BLOCKED HIS VIDEO, FALSELY STATED THAT THE IMPAIRMENT HAD TO DO WITH APPELLANT'S "DEVICE", MUTED HIS "DEVICE", FAILED TO DISCLOSE THE IDENTITY OF THIRD-PARTY PARTICIPANTS, PREDETERMINED THE OUTCOME OF THE HEARING, AND UNLAWFULLY DISCRIMINATED AGAINST HIM BASED ON GENDER.

POINT II

THE JUDGE ERRED, ABUSED HER DISCRETION AND SUBVERTED DUE PROCESS WHEN SHE ARBITRARILY DENIED APPELLANT'S MOTION FOR MODIFICATION REFUSING TO HEAR EVIDENCE NECESSARY TO MAKE A FAIR AND EQUITABLE DETERMINATION IN THIS MATTER INCLUDING BUT NOT LIMITED TO PROOF OF APPELLEE'S INCOME AND FINANCIAL POSITION AND APPLYING THIS DATA TO THE NEW JERSEY CHILD SUPPORT GUIDELINES, FAILING TO INQUIRE ABOUT THE CHILDREN'S NEEDS, THEIR HEALTH, EDUCATION AND WELL-BEING, RECKLESS INDIFFERENCE TO HARM BEING INFLICTED ON THE CHILDREN WHO ARE BEING DEPRIVED OF THEIR FATHER.

POINT III

THE JUDGE ERRED, ABUSED HER DISCRETION AND SUBVERTED DUE PROCESS WHEN SHE FAILED TO CONDUCT A PROPER ASSESSMENT OF WHETHER APPELLANT-FATHER DEMONSTRATED A PRIMA FACIE SHOWING OF A MATERIAL CHANGE IN CIRCUMSTANCES AND BASED HER PRECONCEIVED DECISION ON A NONSENSICAL LAY OPINION THAT THE

ECONOMIC IMPACT OF COVID-19 IS "TEMPORARY" AND A BASELESS CLAIM THAT APPELLANT DIDN'T MAKE A "STITCH" OF EFFORT TO MAKE UP FOR HIS LOSSES IN INCOME AND SAVINGS.

A. Rule 4:50-1(c): Appellee's fraudulent inducement and breach of the agreement governing the Consent Order of 7/6/17.

B. Substantial Decline in Appellant's Income, Increases Expenses, Higher Debt, and Exhaustion of Savings.

C. Appellant's Recently Diagnosed Health Condition.

POINT IV

THE JUDGE ERRED, ABUSED HER DISCRETION AND SUBVERTED DUE PROCESS WHEN SHE FAILED TO DECIDE GENUINE ISSUES OF MATERIAL FACT NECESSITATING A PLENARY HEARING IN VIEW OF THE FACT THAT APPELLEE-MOTHER NEVER FILED THE REQUISITE "CIS" AND SUPPORTING FINANCIAL DOCUMENTATION, FAILED TO DISCLOSE THAT SHE ASSIGNED HER RIGHTS TO THE STATE, MADE MATERIAL MISREPRESENTATION ON HER NJ IV-D APPLICATION FOR CS SERVICES ON 5/16/17, AND FRAUDULENTLY INDUCED APPELLANT-FATHER TO AGREE TO PAY \$400/WEEK IN CHILD SUPPORT TO "MAINTAIN THE STATUS QUO", BREACHED ALL HER PROMISES, AND REMOVED THE CHILDREN FROM NEW JERSEY.

POINT V

THE JUDGE ERRED, ABUSED HER DISCRETION, AND VIOLATED DUE PROCESS BY REFUSING TO APPLY BASIC CONTRACT PRINCIPLES TO THE PARTIES' AGREEMENT GOVERNING THE CONSENT ORDER OF 7/6/17 WHICH EXPRESSLY STATES "THAT PENDING DISCOVERY THE CHILD SUPPORT WILL BE BASED OFF OF SELF REPORTING AND SUBJECT TO ADJUSTMENT RETROACTIVELY TO THE DATE OF FILING"

Defendant's arguments lack sufficient merit to warrant much discussion in a written opinion. R. 2:11-3(e)(1)(E). Our decision reiterates, and to a very limited extent, elaborates on the rulings made by the Family Part judge. We see no evidence of bias or other unconstitutional or improper conduct on the part of the judge. Virtual hearings pose unique challenges for trial judges, and since defendant repeatedly interrupted the judge while she was rendering her decision, the only option left was for her to mute his speaker.

We review factual findings made by Family Part judges deferentially. Cesare v. Cesare, 154 N.J. 394, 413 (1998). As always, we consider questions of law de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016). The judge did not err, either in her factual findings or conclusions of law.

The judge cited to longstanding precedents to the effect that temporary changes in income "are an insufficient basis for modification [of] support." An

obligor is under a continuing obligation to improve the circumstances that have resulted in a reduction in income. Donnelly v. Donnelly, 405 N.J. Super. 117, 130 n.5 (App. Div. 2009). The rationale behind the policy is reasonable. Children's needs do not diminish even if a payor's income is temporarily reduced.

Defendant also attempted to argue that changed circumstances existed because he repudiated the 2017 child support agreement he reached with plaintiff. But defendant cannot withdraw from the agreement as the obligation was reduced to a court order. Without establishing that the reduction in income was more than temporary, and that despite good faith efforts, he was unable to secure supplemental or other employment, defendant was not entitled to relief.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION