SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0648-21

WENDY KREIDLER YABLONSKY,

Plaintiff-Respondent,

v.

MICHAEL YABLONSKY,

Defendant-Appellant.

Submitted April 26, 2023 – Decided July 5, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket Number FM-02-0460-16.

Michael Yablonsky, appellant pro se.

Wendy Kreidler Yablonsky, respondent pro se.

PER CURIAM

In this post-judgment matrimonial matter, defendant Michael Yablonsky appeals from the September 17, 2021 Family Part order denying his motion for

reconsideration of an order entered on June 19, 2020, which he claims is interlocutory and failed to address the issue of imputing income to plaintiff Wendy Kreidler Yablonsky[1] for alimony purposes. The judge denied defendant's motion as time-barred and ordered him to continue paying alimony arrears at the rate of $150 per week. For the reasons that follow, we affirm.

I.

The parties divorced on June 25, 2002, after nineteen years of marriage that produced four children. Based on their handwritten settlement agreement (agreement) executed that day and incorporated into the FJOD, defendant was obligated to pay permanent alimony in the amount of $375 per week to plaintiff through the Probation Department. The agreement provided defendant would receive a $75 per week credit against his alimony payment representing plaintiff's contribution towards defendant's law school loans until the loans were paid in full. Thus, defendant paid $300 per week in alimony following the

[1] The final judgment of divorce (FJOD) was granted in Passaic County. The judge permitted plaintiff to resume her former name of Kreidler. The post-judgment motions have been adjudicated in Bergen County and show plaintiff referred to as Wendy Yablonsky, now known as Wendy Kreidler, Wendy Kreidler Yablonsky, and Wendy Yablonsky. Defendant appears as "plaintiff" and plaintiff appears as "defendant" incorrectly in some of the post-judgment motions. In this opinion, we refer to Wendy Kreidler Yablonsky as "plaintiff" and Michael Yablonsky as "defendant."

parties' divorce. Plaintiff claims the loans were paid off in 2006, unbeknownst to her, but instead of increasing the alimony payment to the agreed upon $375 per week amount, defendant only continued to pay $300 per week for a period of ten years, resulting in a shortfall.

The agreement also provided that defendant's alimony obligation would terminate upon either party's death, plaintiff's remarriage, her cohabitation with an unrelated male for thirty or more consecutive days, and earning $45,000 per year or more. The agreement contained an anti-Lepis clause,[2] which is largely illegible, but states in pertinent part that plaintiff accepts this as "full and final satisfaction of defendant's obligation regarding alimony."

The alimony provision obligated plaintiff to provide defendant with her W-2 and 1099 tax forms by May 1st of each year following the entry of the FJOD. Defendant contends plaintiff has never provided him with this information since their divorce. Plaintiff claims she became a stay-at-home mom after the parties' eldest child was born in 1990 and has not been employed since then. The youngest child was born in 1995. Therefore, plaintiff had no

[2] Lepis v. Lepis, 83 N.J. 139, 145 (1980). In Lepis, our Supreme Court held there is no reason to distinguish between court orders and consensual agreements when a party seeks modification of alimony and support orders based on changed circumstances. An anti-Lepis clause seeks to bar future modification of alimony and support orders.

W-2 or 1099 tax forms to produce to defendant. Plaintiff states she currently receives food stamps and welfare.

In 2015, defendant filed a motion to terminate his alimony obligation. The record does not indicate the basis for the relief sought. On March 21, 2016, the judge denied defendant's motion and ordered him to pay $375 per week effective January 1, 2006, which was the date defendant's law school loans were satisfied. Defendant did not appeal from the judge's order. Two years later, defendant filed another motion to terminate his alimony obligation and vacate his alimony arrears. On October 27, 2017, the judge entered an order denying defendant's motion after placing her decision on the record.[3] The judge also ordered plaintiff to provide defendant with proof of any employment and earnings since the last order of March 21, 2016, within thirty days, pursuant to the parties' agreement. Defendant certified that plaintiff never provided any such information.

Thereafter, defendant filed another motion to terminate alimony retroactive to October 14, 2011,[4] and to be granted at least $135,000 in alimony overpayment credits, on the basis he established a prima facie case of changed

[3] The October 27, 2017 transcript is not contained in the record.

[4] In his merits brief, defendant argues plaintiff's income should be imputed at $45,000 per year as of May 2011. This discrepancy is not germane to our decision.

circumstances. According to defendant, he had been unemployed since he was terminated from Merck on January 11, 2011, and was unable to obtain comparable employment. Primarily, he contended income should be imputed to plaintiff in the amount of $45,000 per year, which would terminate his alimony obligation under the agreement.

On April 13, 2018, the judge denied defendant's motion on the papers without prejudice because he did not establish a prima facie case of changed circumstances. In her decision, the judge noted defendant represented he was working as an "independent attorney" since losing his job at Merck, but he failed to produce his 2017 income tax returns, W-2, and 1099 tax forms, to verify his income. The judge also highlighted that defendant failed to provide any previous case information statements (CIS) in violation of Rule 5:5-4(a) with his motion, and his current CIS did not "add up." The judge also considered the statutory factors set forth in N.J.S.A. 2A:23-34(k)[5] and relevant case law. In a

[5] The factors are:

> (1) The reasons for any loss of income;
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> (2) Under circumstances where there has been a loss of employment, the obligor's documented efforts to find replacement employment or to pursue an alternative occupation;

(3) Under circumstances where there has been a loss of employment, whether the obligor is making a good faith effort to find remunerative employment at any level in any field;

(4) The income of the obligee, the obligee's circumstances, and the obligee's reasonable efforts to obtain employment in view of those circumstances and existing opportunities;

(5) The impact of the parties' health on their ability to obtain employment;

(6) Any severance compensation or award made in connection with any loss of employment;

(7) Any changes in the respective financial circumstances of the parties that have occurred since the date of the order from which modification is sought;

(8) The reasons for any change in either party's financial circumstances since the date of the order from which modification is sought, including but not limited to an assessment of the extent to which either party's financial circumstances at the time of the application are attributable to enhanced earnings or financial benefits received from any source since the date of the prior order;

(9) Whether a temporary remedy should be fashioned to provide adjustment of the support award from which modification is sought, and the terms of any such adjustment, pending continuing employment investigations by the unemployed spouse or partner; and

written statement of reasons, the judge ordered plaintiff to provide "to the court and defendant proof of her earnings since March 21, 2016," including her 2016 and 2017 income tax returns, W-2, and 1099 tax forms.

The judge also ordered that in the event plaintiff failed to comply, defendant may seek "coercive measures" under Rule 1:10-3,[6] meaning "in addition to drawing an inference, by her noncompliance, plaintiff has been earning $45,000 per year or more since March 21, 2016." Defendant was afforded the opportunity to renew his motion to terminate alimony retroactive to that date if plaintiff did not produce the requested information. Defendant never appealed from the April 13, 2018 order.

Several months later, defendant filed another motion to terminate alimony. Defendant also renewed his argument that his alimony obligation

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> (10) Any other factor the court deems relevant to fairly and equitably decide the application.

[6] Rule 1:10-3 provides for "Relief to Litigant." In pertinent part, the Rule states: "Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action." The Rule provides a "means for securing relief and allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order." N. Jersey Media Grp., Inc. v. State Off. of the Governor, 451 N.J. Super. 282, 296 (App. Div. 2017) (alteration in original) (quoting In re N.J.A.C. 5:96, 221 N.J. 1, 17-18 (2015)).

should be terminated retroactive to October 14, 2011, because plaintiff's income should have been imputed to be at least $45,000 as of that year. On September 28, 2018, the judge decided the motion on the papers and entered an order accompanied by a statement of reasons. The judge noted plaintiff failed to comply with the terms of the April 13, 2018 order and thus drew an inference against her as contemplated in that prior order. Therefore, the judge terminated defendant's alimony obligation as of March 16, 2016. Defendant was ordered to pay $150 weekly toward arrears. The judge did not specifically address whether plaintiff's income should be retroactively imputed to be at least $45,000 annually as of 2011, but there is no indication in the record on appeal that defendant ever cured his deficiencies under Rule 5:5-4(a), a necessary prerequisite for an adjudication of the merits of such a motion. Defendant did not appeal from the September 28, 2018 order.

On March 9, 2020, defendant filed another motion seeking an adjudication on the merits of retroactive imputation of income to plaintiff for alimony calculation purposes and a credit of at least $155,000 in overpaid alimony. On June 19, 2020, following a hearing, the judge rendered a decision on the record that day finding defendant failed to file a timely motion for reconsideration of the September 28, 2018 order. The judge noted the twenty-day period within

which to file a motion for reconsideration "has passed," and the forty-five days to file an appeal has "long passed." In conclusion, the judge determined defendant's motion was "time-barred," and denied the motion. A memorializing order was entered.

On August 6, 2021, defendant filed an untimely motion for reconsideration with what defendant characterizes as "permission of the court" of the June 19, 2020 order; to deem the order as interlocutory; and for leave to refile his March 9, 2020 motion and pursue the unadjudicated claims set forth in that motion. On September 17, 2021, a different judge conducted oral argument on the motion for reconsideration. At the conclusion of oral argument that day, the judge rendered a decision on the record.

The judge determined defendant's motion for reconsideration was "out of time" and "should have been filed in front of the judge who issued the order."[7] The judge highlighted that a motion for reconsideration "shall be served no later than [twenty] days after service of the judgment or order upon all parties," and defendant was seeking reconsideration of an order entered "last year." The judge

[7] The judge inadvertently referred to Rule 1:13-1 in her decision, which addresses "Clerical Mistakes." However, the judge correctly referenced Rule 4:49-2, "Motion to Alter or Amend a Judgment or Final Order," in her ruling.

emphasized "these orders are not interlocutory" and defendant's motions were dismissed because he failed to "fix" the deficiencies.

The judge summarized the rulings from prior judges who heard defendant's motions and explained his "issues were addressed on more than one occasion," and he failed to establish a prima facie showing of changed circumstances." The judge highlighted that defendant's alimony had been terminated, and this is "an arrears payback case only," with an amount due of $99,866.84." In conclusion, the judge found plaintiff's income "has nothing to do with this" because defendant is "not paying her alimony anymore." A memorializing order was entered.

In the present appeal from the September 17, 2021 order, defendant argues the judge erred in denying his motion for reconsideration because there has never been an adjudication of the claims set forth in his motion filed on March 9, 2020, which was denied on June 19, 2020. Defendant also contends multiple "interlocutory orders" have been issued in this matter, but none have adjudicated the merits of his claim that plaintiff's income should be imputed to be at least $45,000 as of May 2011, and his alimony obligation should be deemed retroactively terminated as of that date. Plaintiff counters that she has not received any alimony payments or arrears payments since 2019.

II.

From the onset, it is clear to us defendant attempts to collaterally challenge orders dating back to June 19, 2020, despite failing to appeal from earlier orders providing for the same relief. By way of example, defendant failed to appeal from the March 21, 2016 order, denying his motion to terminate alimony and ordering him to pay alimony at the rate of $375 per week, effective January 1, 2006. Similarly, defendant did not appeal from the April 13, 2018 order denying his motion to terminate alimony retroactively, grant him alimony overpayment credits, and impute income to plaintiff of at least $45,000 per year.

Saliently, defendant did not appeal from the June 19, 2020 order denying substantially the same relief. Such untimely challenges to these rulings are barred under Rule 2:4-1(a) (requiring appeals form judgments, orders, decisions, actions, and rules to be filed within forty-five days of their entry). Additionally, we are convinced defendant's arguments lack merit. R. 2:11-3(e)(1)(E).

As to the merits of defendant's arguments, we defer to the family court's factual findings if "supported by adequate, substantial, and credible evidence in the record." D.A. v. R.C., 438 N.J. Super. 431, 451 (App. Div. 2014) (citing Cesare v. Cesare, 154 N.J. 394, 411-13 (1998)). However, we owe no deference to fact findings that are not based on witness testimony or credibility findings.

Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000). We also review a Family Part's formulation of equitable remedies to enforce one of its orders for an abuse of discretion. Milne v. Goldenberg, 428 N.J. Super. 184, 197-98 (App. Div. 2012). The same standard of review is applicable to orders denying reconsideration. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). We review de novo the court's legal conclusions. Barr v. Barr, 418 N.J. Super. 18, 31 (App. Div. 2011) (citing Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009)).

Governed by the standards we have outlined, we perceive no basis to disturb either the June 19, 2020 or September 17, 2021 orders, particularly given defendant's flagrant and longstanding refusal to comply with the FJOD and post-judgment orders, such as not advising when his law school loans were paid off, not paying his alimony arrears, and not providing financial information. A motion for reconsideration is not a chance to get "a second bite of the apple." Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 463 (App. Div. 2002). When a litigant is dissatisfied with a court's decision, reconsideration is not appropriate; rather, the litigant should pursue an appeal. D'Atria v. D'Atria, 242 N.J. Super. 393, 401 (Ch. Div. 1990). Defendant has failed to establish an abuse of discretion warranting appellate intervention.

To the extent we have not specifically addressed defendant's remaining arguments, we conclude they lack 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