SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0974-21

A.R.,[1]

Plaintiff-Respondent,

v.

T.R.,

Defendant-Appellant.

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Submitted January 23, 2023 – Decided February 27, 2023

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Somerset County, Docket No. FM-18-0001-05.

T.R., appellant pro se.

Picillo & Picillo, PC, attorneys for respondent (Natalee A. Picillo, on the brief).

PER CURIAM

[1] We use initials for the parties and their children to protect their privacy. Rule 1:38-3(d).

In this post-judgment matrimonial matter, defendant T.R. appeals from an October 8, 2021 Family Part order, which denied defendant's motions for reconsideration and granted plaintiff A.R.'s cross-motion to correct the calculations utilized to determine the monies allegedly owed to defendant. We affirm, substantially for the reasons articulated in Judge Haekyoung Suh's well-reasoned written opinion.

We discern the following facts from the record. The parties were married on September 21, 1996. Two children were born of the marriage, T.X.R.[2] (born in 1997) and C.R. (born in 1998).

A Judgment of Divorce ("JOD"), which incorporated the parties' Property Settlement and Support Agreement ("PSA"), was entered in this matter on December 29, 2003. As pertinent here, Article XIV of the PSA dealt in part with payment of the children's college expenses. In paragraph four, defendant agreed to pay $12,500 ($6,250 per child) into 529 accounts for the children by December 31, 2009. Paragraph ten provided:

> With a portion of the net proceeds of sale from the former Marital home received by [defendant] and from the net sale proceeds from the sale of the former Hoboken Condominium by [defendant], both of which [plaintiff] has acknowledged are immune from

[2] We insert "X" as a middle initial for the parties' eldest child to distinguish her from her father, who has the same initials.

> equitable distribution, [defendant] has created two 529 Accounts, one for each of the children at Alliance. As of February 13, 2003, the value of each 529 Account was approximately $50,000. The Parties agree that these monies are to be used for the benefit of the children and in accordance with Rules and Regulations governing 529 Accounts.

With respect to college contributions, paragraph eleven included:

> The Parties will contribute to the college educational expenses of the children relative to the costs of room, board, books and tuition, based upon their respective abilities to contribute, considering their then respective assets, liabilities, income and expenses. Neither Party will be compelled to contribute unless there is a shortfall between the aforesaid college costs and the ability to pay for same from any or all of the following sources: substantial assets of the Child(ren); income of the Child(ren); 529 Accounts or successors thereto; Child(ren) savings accounts; and/or scholarships, financial aid, student loans or other similar financial resources available to the Child(ren). The Parties and each child are to agree on where each child will receive post-high school education, considering the relevant financial circumstances of the Parties, the wishes of the Child(ren), the opportunities available to the Child(ren) and the needs of the Child(ren).

Despite the explicit terms of the PSA, the parties have been unable to agree on their proportionate share of the children's college expenses, triggering extensive litigation that continues to date. Currently, T.X.R. is twenty-five years old and has graduated from Trinity College in Dublin, Ireland; C.R. is twenty-four years old, has dropped out of Raritan Valley Community College,

and—by consent order dated July 15, 2020—was deemed emancipated as of May 29, 2020. Defendant's obligation to pay for C.R.'s college has therefore been vacated. As of March 31, 2021, the ending balance in T.X.R.'s 529 account was $62.93 and the ending balancing in C.R.'s 529 account was $4,154.77.

On July 14, 2009, after plenary hearings conducted on March 30 and July 10, the court entered an order finding that the 529 accounts established by defendant at the time of divorce were used in accordance with the PSA and further ordered defendant to create a second 529 account. Specifically, the July 14, 2009 order:

> ORDERED that the 529 account which will be established by December 2009 is an account intended to be used to pay the educational expenses of the children prior to any individual contribution by [p]laintiff or [d]efendant; and it is further
>
> ORDERED that [d]efendant shall fund the 529 account as provided for in the agreement; but [p]laintiff shall be listed as the owner of the account. Neither party may use any funds from this account except with the written consent of the other party. Plaintiff shall provide on a timely basis, copies of statements of the account to [d]efendant . . ..

For reasons unknown to the court, the 529 accounts at Franklin Templeton Investments for T.X.R. and C.R. were not transferred to plaintiff until September 6, 2016. Thereafter, the parties continued to dispute the allocation of monies in

the 529 accounts and the parties' responsibilities to pay for their children's college expenses.

In an October 10, 2017 order, the Family Part ordered defendant to continue to contribute two-thirds of the children's college tuition and expenses, absent an agreement to the contrary. In an August 17, 2018 order, the court enforced a prior January 3, 2018 order, which provided that "[p]laintiff shall pay [one-third] of the college educational expenses of the children unless and until the parties negotiate and/or mediate a new arrangement under the PSA." The court noted that plaintiff had presented prima facie proof that she had paid her one-third share of T.X.R.'s college expenses. The court further clarified that plaintiff "may fund or partially fund her one-third [] obligation through loans [T.X.R.] is eligible for, which she 'guarantees' by making the payments, regardless as to whether [p]laintiff is a promisor or guarantor of the [n]ote."

Defendant, however, continued to insist that he paid more than his two-thirds share of the children's college expenses while plaintiff paid less than her designated one-third share. Therefore, defendant filed yet another motion to find plaintiff in violation of litigant's rights for failing to properly utilize the funds contained within the children's 529 accounts, and plaintiff filed cross-motions, which resulted in the court's June 25, 2021 order. In that order, the

court found that plaintiff failed to satisfy her obligation to provide defendant with copies of statements from the 529 accounts and compelled her to provide defendant with the requisite information regarding all disbursements and any remaining funds in the children's 529 accounts.

Thereafter, plaintiff provided the requisite proofs to defendant, which resulted in defendant filing a motion to compel plaintiff to pay him $14,771.51, representing his alleged overpayment toward the children's college expenses. On August 27, 2021, Judge Suh entered an order, which provided:

> 1. Defendant's motion to compel plaintiff to pay him $14,771.51 representing his alleged share of the children's college costs paid from their respective 529 accounts is DENIED.
>
> . . .
>
> 3. Plaintiff's motion to permit her to pay two-thirds [] of the funds disbursed from [T.X.R.]'s 529 account by refunding same, to be used to pay for [T.X.R.]'s master's degree program, is DENIED.

In Judge Suh's reasoning for paragraphs 1 and 3, she explained:

> [i]n accord with the July 14, 2009 [o]rder, the proper method to calculate defendant's contribution to the children's college costs would be to subtract $22,157.27 from the total tuition paid on behalf of both children. The remaining funds in the 529 accounts ($4,154.77 + 62.94 as of March 31, 2021) should have also gone towards the children's college tuition before defendant would have been obligated to contribute, totaling

> $26,374.98. Defendant would not have been obligated to contribute until $26,374,98 in 529 funds were used to contribute towards same.
>
> . . .
>
> Because the court does not have an accounting of the total tuition paid, the court is unable to determine whether defendant is entitled to repayment. If either party furnishes proof of the entire cost of tuition for [T.X.R.] and [C.R.], $26,374.98 should be deducted from same, then the remaining amount should be divided between the parties, plaintiff one-third, defendant two-thirds. If defendant furnishes proof he paid more than this amount towards the children's college costs, he would be entitled to a credit. However, absent proof of these expenses, the court cannot grant defendant his requested relief. Defendant's motion to compel plaintiff to pay him $14,771.51 representing his alleged share of the children's college costs paid from their respective 529 accounts is DENIED.
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> . . . The 529 accounts should not be refunded, as same were ordered to be depleted before defendant was obligated to contribute to the children's college costs. Plaintiff's motion to permit her to pay two-thirds of the funds defendant alleges are owed to him from [T.X.R.]'s 529 account disbursements by refunding [T.X.R.]'s 529 account, to be used to pay for her master's degree program, is DENIED.

On September 13, 2021, defendant moved to amend paragraph one of the August 27, 2021 order due to newly available evidence, on the grounds that he finally provided the court with an accounting of T.X.R.'s statement of fees paid

to Trinity College. As for T.X.R., defendant claimed that he paid $81,429.09, or $97,714.91,[3] towards her Trinity College tuition and other expenses. As for C.R.'s college expenses, defendant asserted that beyond the $8,300 distributed from C.R.'s 529 account, he has no further accounting of her Raritan Valley Community College tuition payments because plaintiff has sole access to said accountings. In total, defendant contended that he paid $106,015 ($97,714.91 + $8,300) for both daughter's colleges. In addition, without providing proof, defendant extrapolated that plaintiff only paid one-third of $8,500.[4]

In response, plaintiff filed a cross-motion[5] on September 15, 2021 and opposition to defendant's motion for reconsideration on September 22, 2021. Plaintiff argued that the $8,310.27 distribution figure from C.R.'s account was incorrect because it included the 529 plan's automatic age-related administrative transfer of money from one account into another account, which is not a

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[3] Defendant utilizes a conversation rate of 1.2 to convert the price he has paid from euros to U.S. dollars.

[4] Defendant used the figure of $8,500, which is not the correct amount disbursed from T.X.R.'s 529 account. The financial statements show $6,300 disbursed in 2016 and $2,000 disbursed in 2017, for a total disbursement of $8,300.

[5] Due to a miscommunication, both parties filed motions for reconsideration; defendant on September 13, 2021, and plaintiff on September 15, 2021. The court considered plaintiff's motion for reconsideration, the later in time, as a cross-motion.

disbursement. Regarding her cross-motion for reconsideration, plaintiff requested that the court reconsider mistakes of fact as to the calculation utilized to determine the monies allegedly owed to defendant and set the proper amount of alleged monies owed at $5,533 (the $8,300 disbursement from T.X.R.'s 529 account times two-thirds). Plaintiff objected to the $22,157.77 figure used by the court to calculate the amount of monies distributed from T.X.R.'s and C.R.'s 529 accounts and argued that it was error for the court to treat the children's accounts as one. Because defendant did not provide proof that he made any tuition payments for C.R., and C.R.'s tuition did not exhaust her 529 account, plaintiff contended that defendant was not due any reimbursements from C.R.'s account. Finally, plaintiff requested that the court permit her to credit the $5,533 towards defendant's share of T.X.R.'s current tuition for her master's degree in lieu of the money purportedly owed to defendant.

On October 8, 2021, Judge Suh issued an order: (1) denying defendant's motion for reconsideration of paragraph one of the August 27, 2021 order; (2) denying defendant's motion for reconsideration to compel plaintiff to use remaining funds to pay college expenses; (3) granting plaintiff's cross-motion to correct the calculations utilized to determine the monies allegedly owed to defendant, setting the proper amount owed to defendant as $5,533, and treating

C.R.'s 529 account and T.X.R.'s 529 account separately for purposes of calculating defendant's reimbursement; and (4) denying plaintiff's request to credit the $5,533 towards defendant's share of T.X.R.'s current tuition for her master's degree in lieu of money allegedly owed to defendant. In a written opinion affixed to the October 8th order, Judge Suh went through the procedural history of this matter in painstaking detail before addressing the parties' arguments and providing the reasoning for her determinations.

In addressing the calculation method for defendant's reimbursement, Judge Suh opined:

> Both parties' proposed calculation method[s] to determine defendant's reimbursement [are] inconsistent with the PSA and prior orders. . . . because both treat the distributions from the 529 accounts as a portion of defendant's two-thirds contribution. Distributions from the 529 accounts should not be treated as part of either parties' two-third, or one-third, contribution. . . . The PSA makes clear that the 529 accounts should be exhausted before[] the parties contribute a single penny. Then, after the 529 accounts are exhausted, the October 10, 2017 [o]rder instructs, defendant shall contribute two-thirds [] and plaintiff one-third [] of the child's remaining college expenses.

The judge then went on to describe the four-step process used by the court to determine whether defendant is entitled to reimbursement for paying more than his required two-thirds share of the children's college expenses:

> (1) Calculate the child's total college tuition and costs, and the amount disbursed (or should have been disbursed) from the 529 Account;
>
> (2) Subtract the amount disbursed from the 529 Account (plus any substantial assets of the child, income of the child, the child's saving accounts, and/or scholarships, financial aid, student loans or other similar financial resources available to the child used to pay the child's tuition)[] from the child's total college tuition and costs;
>
> (3) With the difference from step two, calculate the two-thirds [] defendant should have paid and the one-third [] plaintiff should have paid; [and]
>
> (4) Calculate if defendant paid more than his required two-thirds [] by reviewing his contributions to the child's college expenses.

Although this calculation method remained relatively unchanged from the August 27, 2021 order, Judge Suh found two aspects that required amendment. First, the judge recognized that the four-step process above should be applied separately to each child's 529 accounts, and in C.R.'s calculation, the remaining balance should not be included as it was properly not distributed. Second, in calculating whether defendant is entitled to reimbursement for his contribution to C.R.'s college expenses, the amount distributed from C.R.'s 529 account in 2019 was to be recalculated to $1,692, as opposed to the $8,310.27 noted in the August 27, 2021 order. The judge explained that, in the August 27, 2021 order,

the judge reached the $22,157.27 figure by adding the distributions from both children's 529 accounts. In reaching that figure, the court used $8,310.27 ($6,618.27 + $1,692) as the distribution from C.R.'s 529 account in 2019; that figure incorrectly included a periodic aged-based portfolio transfer, as explained by the Franklin Templeton 529 Handbook.

Judge Suh then went on to determine defendant's reimbursement. The parties supplemented the record with T.X.R.'s Trinity College financial statement, which indicated that total tuition and costs from June 2016 to June 2021 equaled $116,308.03.[6] It was further undisputed that $8,300 was distributed from T.X.R.'s 529 account and used to make tuition payments in 2016 and 2017; the disbursements from T.X.R.'s 529 account and the remaining 529 account balance totaled $8,362.93. Thus, the difference between T.X.R.'s total tuition and costs, and the disbursements and remaining balance was $107,945.10 ($116,308.03 - $8,362.93).

In addition, the judge found that T.X.R. made direct contributions, totaling $9,128.66, which must also be subtracted from the total net tuition and costs according to the PSA. Therefore, the total net tuition and costs are

[6] The court utilized the then-current exchange rate of 1.18 to convert the price of tuition from euros to U.S. Dollars. In euros, the total of T.X.R.'s tuition and costs were $98,566.13.

$97,173.29 ($116,308.03 - $8,300 - $62.93 – 10,771.81). The judge then found that defendants required two-thirds contribution was $64,782 and plaintiff's one-third contribution was $32,391. Defendant, however, averred that he contributed a total of $96,086.33 towards T.X.R.'s tuition.

Applying the four-step process above and the changes to the August 27, 2021 order, with reference to T.X.R.'s Trinity College financial statements, the judge determined that "defendant may be due reimbursement for his contribution to [T.X.R.]'s Trinity College expenses[] if he can prove he actually paid $96,086.33 either to plaintiff or to Trinity College for [T.X.R.]'s college expenses." However, the judge found that defendant failed to submit proof of his payments, which—if he did pay—he should have in the form of bank statements, cancelled checks, credit card statements, or electronic transfers. Absent credible proof of payment, Judge Suh was unable to find defendant entitled to any reimbursement from plaintiff for T.X.R.'s college tuition and expenses.

Similarly, the judge was unable to calculate whether defendant was due reimbursement for C.R.'s college tuition and expenses. The judge found that, taking out the periodic age-based portfolio transfer, $7,239 was disbursed from C.R.'s 529 account. However, the judge's analysis was unable to proceed beyond

step one of the four-step calculation process because neither party provided an accounting of the total tuition paid for C.R.'s college. Therefore, the judge found that defendant failed to provide proof of his contributions to C.R.'s college tuition and costs, militating the denial of defendant's motion to reconsider paragraph one of the August 27, 2021 order.

Next, regarding plaintiff's request to credit $5,533 towards defendant's share of T.X.R.'s current tuition, the judge found that defendant has no obligation to pay for T.X.R.'s master's degree as she is emancipated. Ultimately, the judge denied plaintiff's request, finding that if defendant paid more than his fair share of T.X.R.'s college expenses, he is entitled to reimbursement from plaintiff.

Finally, the judge denied defendant's request to compel plaintiff to use the remaining funds in the two 529 accounts to pay current college expenses. The judge found that defendant's request was not appropriate for a motion for reconsideration because it was new and brought to the court's attention for the first time on motion for reconsideration. This appeal followed.

On appeal, defendant presents the following arguments:

> POINT I
>
> JUDGE SUH ERRED IN DENYING [DEFENDANT A] $14,771.51 REIMBURSEMENT FOR

DUPLICATE PAYMENTS TOWARD [HIS] DAUGHTERS' TUITION.

POINT II

JUDGE SUH ERRED WHEN SHE DENIED [DEFENDANT'S] REQUEST FOR PLAINTIFF TO PAY OUT REMAINING 529 FUNDS TOWARDS COLLEGE EXPENSES.

POINT III

JUDGE SUH MISCALCULATED THE AMOUNT OWED TO DEFENDANT. JUDGE SUH ALSO ERRED WHEN SHE CAPRICIOUSLY DIVIDED WHAT'S DEFINED IN [THE JULY 14, 2009] ORDER AS A SINGLE ACCOUNT INTO MULTIPLE ACCOUNTS.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). 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, 154 N.J. at 413). Thus, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 41-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Accordingly, we will not "disturb the 'factual finds and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the

competent, relevant[,] and reasonably credible evidence as to offend the interests of justice.'" Cesare, 154 N.J. at 412 (quoting Rova Farms, 65 N.J. at 484).

In addition, we review the denial of equitable remedies for abuse of discretion. Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993); cf. Kaye v. Rosefielde, 223 N.J. 218, 231 (2015) (noting that a Chancery judge has broad discretionary power to adapt equitable remedies to the specific circumstances of a case). "A court abuses its discretion when its 'decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)). "[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." R.Y., 242 N.J. at 65 (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

Here, we discern no such abuse of discretion and find that defendant's contentions lack sufficient merit to warrant extended discussion in a written opinion. Rule 2:11-3(e)(1)(E). We write only to add the following brief comments.

Based on the terms of the PSA, we find that the four-step process articulated by Judge Suh in the October 8, 2021 order appropriately captures the parties' intended method for calculating defendant's reimbursement. Again, that process is as follows:

> (1) Calculate the child's total college tuition and costs, and the amount disbursed (or should have been disbursed) from the 529 account;
>
> (2) Subtract the amount disbursed from the 529 account (plus any substantial assets of the child, income of the child, the child's savings accounts, and/or scholarships, financial aid, student loans or other similar financial resources available to the child used to pay the child's tuition)[] from the child's total college tuition and costs;
>
> (3) With the difference from step two, calculate the two-thirds [] defendant should have paid and the one-third [] plaintiff should have paid; [and]
>
> (4) Calculate if defendant paid more than his required two-thirds [] by reviewing his contributions to the child's college expenses.

Pursuant to this calculation, defendant is not entitled to any reimbursement based solely on disbursements from either of the children's 529

accounts. Pursuant to paragraph four of the PSA and the July 14, 2009 order, defendant was required to fund the 529 accounts. It is only payments for college tuition and costs made by defendant after those accounts are, or should have been, exhausted, which also exceed his two-thirds obligation for such expenses, to which defendant is entitled to reimbursement.

As for reimbursements for T.X.R.'s tuition, Judge Suh found that defendant failed to submit proof of payment to back-up his highlighted notations and handwritten circles on the Trinity College financial statement. We agree. Since defendant moved for the modification under review, he bears the burden of proving he is entitled to reimbursement from plaintiff. Absent credible proof of payment, including bank statements, cancelled checks, credit card statements, or electronic transfers, we are unable to find that the judge abused her discretion in denying defendant's motion for reimbursement.

We also find no abuse of discretion in the judge's denying defendant reimbursement for payments allegedly made for C.R.'s college tuition and expenses. Other than an unsworn statement in an email stating that C.R.'s tuition was $3,642 in 2018-2019, defendant has not provided the judge with a credible accounting of the total tuition he paid for C.R.'s college. Despite defendant's argument that he is unable to procure a statement from C.R.'s former college

because plaintiff is the account owner, he has yet to specifically request the trial court to compel production of those statements. Thus, without an accounting of C.R.'s qualifying expenses, the judge was unable to proceed past step one of the four-step process articulated above.

Finally, we discern no abuse of discretion in Judge Suh's bifurcation of the children's two 529 accounts, thereby applying the four-step process separately to each account. We agree with the judge that this method is supported by the language of Article XIV, paragraph four of the PSA, which required defendant "to pay $12,500.00 ($6,250 per child) into 520 [a]ccounts for the [c]hildren," and paragraph ten, which stated that defendant "has created two 529 [a]ccounts, one for each of the children[.]" (emphasis added). We find defendant's argument to the contrary unpersuasive; it is immaterial that the July 14, 2009 order uses "account" and "accounts" interchangeably, as the order explicitly sought to effectuate the terms of the PSA. Therefore, the money in C.R.'s 529 account continues to belong to her for college expenses should she choose to re-enroll, as she remains the beneficiary.

Affirmed.