SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1120-21

DARLENE QUINTANILLA-LOWRY,

Plaintiff-Respondent,

v.

CRAIG LOWRY,

Defendant-Appellant.

Submitted December 19, 2022 – Decided March 30, 2023

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FM-10-0219-21.

Laufer, Dalena, Jensen, Bradley & Doran, LLC, attorneys for appellant (James C. Jensen, on the briefs).

Rutgers Law Associates, attorneys for respondent (Amy L. Braunstein and Ruth Landa, J.D., appearing pursuant to Rule 1:21-3, of counsel and on the brief).

PER CURIAM

Defendant Craig Lowry appeals from the September 17, 2021 dual judgment of divorce (DJOD) entered after trial by the Family Part, as well as the November 19, 2021 order denying his motion for reconsideration of two provisions of the DJOD. We affirm.

I.

Craig[1] and plaintiff Darlene Quintanilla-Lowry were married on January 22, 2020. On July 16, 2020, Quintanilla-Lowry and Craig's mother, Barbara Lowry, purchased the marital home for $550,000 as tenants in common. Barbara contributed $111,013.70 for the down payment and related costs. Quintanilla-Lowry, who had a steady income, contributed her good credit to securing a mortgage on the property with Barbara in the amount of $460,650. Craig is not on the deed or mortgage because of his poor credit. Craig, Quintanilla-Lowry, Barbara, and Quintanilla-Lowry's three sons, who are not related to Craig, moved into the house shortly after the purchase. Craig and Quintanilla-Lowry agreed that they would be evenly responsible for the mortgage payments.

On November 6, 2020, after ten months of marriage, Quintanilla-Lowry filed a complaint for divorce. In December 2020, Quintanilla-Lowry and her

[1] Because Craig and his mother, who is discussed in this opinion, share a surname, we refer to them by their first names. No disrespect is intended.

three sons moved from the marital home to escape what she described as Craig's abusive behavior. Although she took her dogs, Quintanilla-Lowry left two cats that she owned prior to the marriage in the home. She ceased contributing to the mortgage payments, as she was paying rent for the apartment in which she and her sons were living. Craig and Barbara remained in the home. Mortgage payments on the home fell into arrears and local property taxes were not paid.

At a pretrial settlement conference, the court directed counsel for both parties to notify Barbara that "she has a right to intervene in this . . . action because she's a title owner of a marital asset." The following day, Quintanilla-Lowry filed an amended complaint, which noted that Barbara was a non-party with an interest in a marital asset. The amended complaint was served on Barbara. Quintanilla-Lowry also moved to join Barbara as an indispensable party. The court did not enter an order deciding the motion.

Following a two-day trial at which Craig and Quintanilla-Lowry testified, the trial court issued an oral opinion granting the divorce. The court found that equitable distribution of the marital home was the most significant unresolved issue. Quintanilla-Lowry urged the court to order the sale of the home so that Barbara could be reimbursed for her financial contribution and the remaining proceeds of the sale distributed to her, Craig, and Barbara. Craig argued that

none of the value of the marital home should be distributed to Quintanilla-Lowry because she waived her interest in the property. Alternatively, he proposed that he be permitted to purchase Quintanilla-Lowry's equitable share of the property, take title with Barbara, and refinance the mortgage in his and Barbara's names.

The court began its analysis by rejecting Craig's argument that Quintanilla-Lowry waived her interest in the marital home. His argument was based on a statement by Quintanilla-Lowry's prior counsel in a January 6, 2021 letter submitted to the court. The court found that the record contained no evidence that the Quintanilla-Lowry authorized her prior counsel to waive her interest in the marital home or that she subsequently acquiesced in the attorney's exercise of apparent authority. The court found credible Quintanilla-Lowry's testimony that she did not authorize her prior counsel to waive her interest in the marital home. The court noted that Craig did not call the prior counsel as a witness and offered no evidence explaining why Quintanilla-Lowry would waive her interest in a valuable asset without receiving a benefit in return.

With respect to equitable distribution of the home, the court found that Barbara, who was served with the amended complaint, was on notice of her right to intervene in the divorce action, but chose not to do so. In addition, although Barbara was available to testify at trial, neither party called her as a witness.

The court decided it would proceed to determine how best to distribute the property without Barbara having made an appearance.

Noting Barbara's contribution to the purchase of the property and her ownership with Quintanilla-Lowry as tenants in common, the court found that:

> what we end up with here is really what amounts to a partition that's really a necessity because I can't divide the home into three separate living sections where the plaintiff lives in one, the defendant lives in one and Barbara Lowry lives in another.

The court found that in the absence of any evidence that Craig was prepared to purchase Quintanilla-Lowry's interest and able to refinance the mortgage, the sale of the property was warranted. The court determined that the proceeds of the sale will first satisfy the outstanding mortgage balance and closing costs. After those expenses are paid, the next $111,013.70 will go to Barbara. The court directed that the remaining proceeds, if any, will be divided evenly between Craig, Quintanilla-Lowry, and Barbara.

The court also distributed the two cats to Quintanilla-Lowry because they belonged to her prior to the marriage. The court rejected Craig's argument that she abandoned the cats when she fled the marital home with her children. The September 17, 2021 DJOD memorializes the trial court's decision.

Craig subsequently moved pursuant to R. 4:49-2 for reconsideration of the provisions of the DJOD concerning the marital home and cats. On November 19, 2021, the court issued an order denying Craig's motion. In a statement of reasons, the court found that Craig produced no evidence of the extreme hardship he alleged he would suffer if the marital home was sold nor cited any statute, legal precedent, or evidence the court overlooked when it ordered the sale. The court noted that after Quintanilla-Lowry left the home, Craig and Barbara failed to keep the mortgage current, demonstrating a financial inability to purchase Quintanilla-Lowry's interest or obtain refinancing. The court also concluded that Craig produced no evidence and cited no legal authority justifying reconsideration of its decision regarding distribution of the cats.

This appeal followed. Craig argues the trial court erred when it: (1) ordered the sale of the marital home without joining Barbara as a party; (2) treated the distribution of the marital home as a partition; (3) found Quintanilla-Lowry did not waive her interest in the marital home; and (4) failed to reconsider its distribution of the cats to Quintanilla-Lowry.

II.

In reviewing a non-jury trial, this court defers to a trial judge's factfinding when supported by adequate, substantial, and credible evidence. Cesare v.

Cesare, 154 N.J. 394, 412 (1998). We do "not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence." Mountain Hill, LLC v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (quoting State v. Barone, 147 N.J. 599, 615 (1997)).

Where there is "satisfactory evidentiary support for the trial court's findings . . . [we] should not disturb the result . . . ." Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012) (citing Beck v. Beck, 86 N.J. 480, 496 (1981)). Deference is especially appropriate in bench trials "when the evidence is largely testimonial and involves questions of credibility." Cesare, 154 N.J. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). "[A] trial judge who observes witnesses and listens to their testimony . . . is in the best position to 'make first-hand credibility judgments about the witnesses who appear on the stand.'" Slutsky v. Slutsky, 451 N.J. Super. 332, 344 (App. Div. 2017) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). We will "not disturb the 'factual findings 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 Resort v. Inv. Ins. Co., 65 N.J. 474, 484 (1974)).

The purpose of equitable distribution is to divide property acquired during the marriage in a manner that is just under the circumstances of the case. Painter v. Painter, 65 N.J. 196, 209 (1974). When equitably distributing marital property, a judge must "decide[] what specific property of each spouse is eligible for distribution, . . . then determine its value for purposes of such distribution, and [lastly,] decide the most equitable allocation between the parties after analysis of the statutory factors set forth in N.J.S.A. 2A:34-23.1." Genovese v. Genovese, 392 N.J. Super. 215, 225-26 (App. Div. 2007) (citing Rothman v. Rothman, 65 N.J. 219, 232 (1974)).

We evaluate Family Part decisions concerning equitable distribution under an abuse of discretion standard. See Borodinsky v. Borodinsky, 162 N.J. Super. 437, 443-44 (App. Div. 1978). When applying that standard, "[w]e must determine 'whether the trial court mistakenly exercised its broad authority to divide the parties' property or whether the result reached was bottomed on a misconception of law or findings of fact that are contrary to the evidence.'" Sauro v. Sauro, 425 N.J. Super. 555, 573 (App. Div. 2012) (quoting Genovese, 392 N.J. Super. at 223). We will affirm an equitable distribution award if "the trial court could reasonably have reached its result from the evidence presented, and the award is not distorted by legal or factual mistake." La Sala v. La Sala,

335 N.J. Super. 1, 6 (App. Div. 2000) (citing Perkins v. Perkins, 159 N.J. Super. 243, 247-48 (App. Div. 1978)).

We have carefully reviewed the record and find no merit in Craig's arguments that the trial court erred in the manner it equitably distributed the marital home. There is sufficient support in the record for the trial court's conclusion that Craig failed to produce evidence of "a clear, unequivocal and decisive act" establishing "an intention to relinquish" Quintanilla-Lowry's interest in the home. See Mitchell v. Alfred Hofmann Inc., 48 N.J. Super. 396, 405 (App. Div. 1958). The prior counsel's letter is insufficient to establish that its author had the authority to waive Quintanilla-Lowry's interest in the valuable asset. She testified that she did not authorize her counsel to waive her interest and, as the trial court aptly found, Quintanilla-Lowry's subsequent actions evinced her intent to seek equitable distribution of her interest in the property.

The court's decision equitably distributing the parties' interests in the property was well within its discretion. The court adequately compensated Quintanilla-Lowry for the contribution of her good credit to obtain the mortgage and the mortgage payments she made and Craig for his share of the appreciation in the value of the property during the marriage. The only viable method to accomplish the distribution was to order the sale of the property, given that

Barbara contributed more than $111,000 to the purchase of the property and was, according to both parties and the court, entitled to the return of those funds. Craig's claim that the trial court should have allowed him to purchase Quintanilla-Lowry's interest and refinance the mortgage is unsupported by evidence that he had the financial means to accomplish this proposal. To the contrary, the record demonstrates that Craig and Barbara allowed the mortgage and local property taxes on the house to fall into significant arrears after Quintanilla-Lowry left the home.

The record demonstrates that Barbara was aware of the pending divorce action, was alerted to the fact that she could move to intervene as a party, and was available as a witness, but did not testify at trial. Craig, who proffered that he was his mother's agent under a power of attorney, offers no convincing argument that the trial court erred by equitably distributing the marital asset in which Barbara held an interest. We note that Barbara did not move to intervene in this appeal and has offered no argument that she was in any way harmed by the manner in which the marital home was distributed.

We also see no error in the trial court's decision to distribute the cats to Quintanilla-Lowry. "Any property owned by a husband or wife at the time of marriage will remain the separate property of such spouse and in the event of

divorce will be considered an immune asset and not eligible for distribution." Valentino v. Valentino, 309 N.J. Super. 334, 338 (App. Div. 1998). Cats, although beloved pets to whom people can become emotionally attached, are under the law, the property of the person who owns them. Craig offered no convincing evidence that the trial court should have distributed Quintanilla-Lowry's cats to him.

Finally, we find no error in the trial court's denial of Craig's motion for reconsideration. Rule 4:49-2 provides:

> Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or final order shall . . . state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or final order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

"A motion for reconsideration . . . is a matter left to the trial court's sound discretion." Lee v. Brown, 232 N.J. 114, 126 (2018) (quoting Guido v. Duane Morris, LLP, 202 N.J. 79, 87 (2010)); see also Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). A party may move for reconsideration of a court's decision pursuant to Rule 4:49-2, on the grounds that (1) the court based its decision on "a palpably incorrect or irrational basis," (2) the court either

failed to consider or "appreciate the significance of probative, competent evidence," or (3) the moving party is presenting "new or additional information . . . which it could not have provided on the first application." Cummings, 295 N.J. Super. at 384 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). The moving party must "initially demonstrate that the [c]ourt acted in an arbitrary, capricious, or unreasonable manner, before the [c]ourt should engage in the actual reconsideration process." D'Atria, 242 N.J. Super. at 401. A motion for reconsideration is not an opportunity to "expand the record and reargue a motion. . . . [It] is designed to seek review of an order based on the evidence before the court on the initial motion, . . . not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record." Capital Fin. Co. of Del. Valley v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008).

We agree with the trial court's conclusion that Craig's motion for reconsideration was baseless. His motion merely reiterates the claims he made at trial and offered no sound legal basis on which he was entitled to relief.

Affirmed.