

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1509-21

L.R.,

Plaintiff-Appellant,

v.

M.R.,

Defendant-Respondent.

Submitted February 27, 2023—Decided March 6, 2023

Before Judges Mawla and Marczyk.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Gloucester County,
Docket No. FM-08-0140-17.

Law Office Michael K. McFadden, LLC, attorney for
appellant (Michael K. McFadden, on the briefs).

Donald N. Elsas, attorney for respondent.

PER CURIAM

Plaintiff L.R. appeals from a December 23, 2021 order denying her post-judgment motion for an order compelling defendant M.R. to: provide her with

all student aid applications filed and grant award letters received on behalf of the parties' sons; repay grants received during the 2017-18 school year; file an amended Free Application for Federal Student Aid (FAFSA) form for the 2017-18 school year; and provide proof of each child's loan indebtedness and plan for payment of college. We affirm.

The parties were divorced in 2016 and entered a matrimonial settlement agreement (MSA). The MSA stated the parties would have joint legal and physical custody of both sons and neither party was designated the parent of primary residence. It noted defendant earned virtually all the family's income and plaintiff had "recently begun a new career . . . and . . . has nominal income." The MSA memorialized the parties' agreement they each had "responsibility to financially assist with the post[-]high school education of the children." The parties agreed they would communicate about sharing the children's college expenses. They agreed the older son, who was then beginning his senior year in high school, would "apply for any available financial aid, and the parties will share their income information with each other, and cooperate in regard to submission of [the] FAFSA or any financial aid applications."

The older child enrolled in a state university in 2017 and graduated in 2021. His younger sibling enrolled in the same school in the 2021. In 2019, the

older child began to reside with defendant. The younger child also began residing with defendant at some point.

On December 16, 2019, the parties entered a consent order maintaining joint legal custody of the children. The consent order further provided as follows:

Defendant will use his then-current address for all FAFSA applications, grants, loans that are co-signed . . . , loans of any other sort, scholarships, and/or aid for both [children]. . . . Defendant will file [the] FAFSA form(s) by the [first] of December of each year with proof supplied to [p]laintiff contemporaneously with [the] filing and will supply proof of filing the FAFSA in prior years.

. . . .

Defendant will pay all of the children's expenses without contribution from [p]laintiff until both children become emancipated

On January 5, 2020, the parties entered two consent orders, which collectively maintained the portions of the December 2019 order recited above. The orders stated "[d]efendant will pay any and all college expenses and costs" for the children and included a detailed list of over twenty categories of expenses defendant was required to bear. The parties further agreed:

Plaintiff will have unfettered abilities and rights to access . . . all of the children's educational records carrying through their entire college attendance. . . .

Defendant will close out the FAFSA year with a properly completed, signed FAFSA form and his tax return timely submitted to FAFSA. Plaintiff's identity will not be used by [d]efendant, and either or both of the children on any FAFSA forms. Any incorrectly completed FAFSA forms submitted by him or by either child will be the sole responsibility of [d]efendant and he will indemnify [p]laintiff in full and hold her harmless from any liability thereof.

Defendant agrees that in no one year will the children incur more than \$45,000 per year (not cumulatively) in loans for that child's college attendance.

Thereafter, plaintiff filed an enforcement motion. She claimed defendant misrepresented his income on the FAFSA, which resulted in the children obtaining greater grants and loans than if defendant had properly reported his income. She alleged her name and address were used to obtain the money even though defendant was the residential custodial parent, which therefore made her financially responsible for repayment.

Plaintiff requested the court require defendant to submit his tax returns and income information from 2015 onwards and cooperate with submitting a FAFSA or other financial aid applications. She requested the court compel defendant to obtain the institutional student records from their sons' university after defendant submitted a new FAFSA form without her information. Plaintiff

asked the court compel defendant to refinance or repay grants and loans received at his sole cost without her assistance or financial information.

On July 2, 2020, the court issued an order accompanied by a written opinion denying the motion in its entirety. The court made the following findings:

First, to clarify, a grant is not the same as a loan. A grant does not need to be paid back by anyone. It is money granted to a student. It is unclear why [plaintiff] would want this court to force the children to return their grants and take out loans instead, which they would have to pay back. Second, [plaintiff] has provided no proof that she is a signatory to the children's loans. She is not a cosigner to a loan and will, therefore, not be held responsible to pay her sons' loans back. The FASFA is not a loan or a grant. It is simply utilized to determine a student's eligibility for aid. It does not impose any obligation upon her as a parent to a child in college.

Also, her accusation that [defendant] either purposefully or accidentally misrepresented his income and address on the FASFA and other college-related forms is a serious accusation for which she provides no real proof other than the appearance of her address listed on said forms. According to [defendant], [plaintiff]'s address is on the above-mentioned forms because [the older son] was residing with her primarily until sometime in 2019.

. . . .

[Defendant] is correct that any issue [plaintiff] is now experiencing concerning [the older son]'s first two

years of college should have been raised at the time the parties entered into their [c]onsent [o]rders. However, there appears to be no issue, and [defendant] is not able, nor required to retroactively edit prior FAFSA and other college related documents. [Plaintiff] has not established that she is responsible for any college finances for the children, and [defendant] has not requested that she assist in payment in the future. He is in compliance with the [c]onsent [o]rders of 2019 and 2020. Defendant should ensure that [plaintiff]'s information is left off of subsequent FAFSA applications and other college-related documents. [Plaintiff] must cease any incessant attempts to contact [defendant] and the employees at [the university's] financial aid office unless she can prove there is a specific issue and/or violation of the [c]onsent [o]rders.

In November 2021, plaintiff again moved to enforce litigant's rights. She requested the court compel defendant to: repay the 2017-18 Pell and TAG grants¹ received by the children; submit an amended FAFSA for 2017-18; provide proof of all loans the children were responsible for; provide proof of the

¹ A Federal Pell Grant is a federal student grant program, which awards money "to undergraduate students who display exceptional financial need and have not earned a bachelor's, graduate or professional degree." Federal Pell Grants, U.S. Dep't of Educ., <https://studentaid.gov/understand-aid/types/grants/pell> (last visited Feb. 24, 2023). The New Jersey Tuition Aid Grant program administers TAG awards, which "go to full-time undergraduate students enrolled in an approved degree or certificate program." Tuition Aid Grant, N.J. Higher Educ. Student Assistance Auth., https://www.hesaa.org/documents/tag_program.pdf (last visited Feb. 24, 2023).

younger son's tuition and costs, how they were paid, and "the plan for subsequent college"; and all payments made for the older child's college education.

Plaintiff certified the 2017-18 FAFSA filed for the older son's first year of college "contained many falsities and errors[,] " including that defendant signed her name, used her identity, and reported her income rather than his in order to qualify the son for money. Plaintiff stated: "I do not want . . . [d]efendant's conduct to continue to disparage my financial identity and also potentially expose my son to civil or criminal exposure." As evidence of her claims, she attached a document entitled "2017-2018 Institutional Student Information Record." The document was addressed to the older child and advised him he "may be eligible" for a Pell grant or other student aid. The document also advised:

The parents' marital status you reported in [i]tem [fifty-nine²] does not appear to agree with the parents' tax return filing status reported in [i]tem [eighty-two]. If one of these items is incorrect, you need to make a correction. If the information you reported is correct, make sure the income information reported in [i]tems [eighty-five] through [eighty-nine], [ninety-three], and [ninety-four] correctly reflects your parents' 2015 income.

² Plaintiff's brief does not explain the nature of the item categories. Regardless, they are not dispositive.

Plaintiff certified she contacted the "State Department of Education" and was advised the grants should be paid back. She claimed the "overarching reason" for her motion was to ensure defendant paid the children's education "and not overly burden the children."

Defendant's opposition to the motion noted the 2019 and 2020 consent orders all reflected he was solely responsible for the children's college expenses. Moreover, when plaintiff filed her prior motion resulting in entry of the July 2020 order, the court found "no improprieties" on defendant's part regarding the payment of college or the "application for and acceptance of any financial aid." Defendant noted the matter was moot because the older child graduated, and the consent orders did not require defendant to furnish plaintiff with proof of how the younger child's college was being paid or the future payment plan.

At oral argument, plaintiff's counsel claimed the children should not have qualified for grants because defendant's income exceeded \$180,000. He asserted the children only received the grants because defendant completed the FAFSA incorrectly. Furthermore, plaintiff, as a joint legal custodian, was entitled to the college payment information despite the fact she was not financially responsible.

Defendant's counsel argued plaintiff was represented by counsel when she entered the consent orders, which clearly stated she had no financial

responsibility for college and did not contain language requiring defendant to share the payment information with her. Regardless, defendant provided plaintiff with the FAFSAs he filed. Counsel asserted the matter of the "2017-18 financial aid is an absolute nonissue" because the court adjudicated it in the July 2020 order. Further, the older child had graduated and "if there was any issue concerning unpaid debts for college, he wouldn't have been able to graduate."

The motion judge made oral findings. He denied plaintiff's request to compel defendant to provide her with student aid reports, gifts, and grant award letters, FAFSAs filed, and to re-file a FAFSA for 2017-18 because the issue was previously adjudicated. Plaintiff's request defendant repay the 2017-18 grant awards was also denied because defendant was responsible for any college-related debt and the matter was "between him and [the] creditor" The judge also denied plaintiff's request defendant provide proof of the younger child's college tuition and costs, a plan for payment of the costs, and proof of the payments made for the younger son, and his loans because the obligation solely belonged to defendant.

The judge concluded as follows:

I think even though there's joint custody there was a benefit to the bargain to [plaintiff] . . . in having no

responsibility for these ongoing college costs. [Defendant] has undertaken that onus himself.

If defendant were to take advantage of his son who was still in college, that son could certainly call mom and say hey, you know I'm footing the bill for more than I'm supposed to. Do you know anything about this? And I think that having [plaintiff] privy to the ledger sheet, if you will, for the college cost is going to do nothing but fuel a fire for future litigation that is unnecessary.

Again, there's no indication that the bills are not being paid. There was a trade that took place in that consent agreement for [defendant] to assume those bills. And [plaintiff] got a benefit and so did [defendant]. And it seems the benefit to [defendant] is he doesn't have to negotiate anymore with [plaintiff] . . . over these costs.

On appeal, plaintiff reasserts the arguments raised before the motion judge and argues he abused his discretion. She reiterates that as a joint legal custodian, she is entitled to participate in all major decisions on behalf of the children, including the payment of college. Plaintiff argues the court's misunderstanding of joint legal custody was a misapplication of the law to which we owe no deference.

"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)). "We do 'not disturb the "factual findings and legal conclusions of the trial judge unless . . . 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.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (alteration in original) (quoting Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974))). Therefore, "[o]nly when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should we interfere" Id. at 428 (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007))). Whether to grant a litigant's request for enforcement is also reviewed under an abuse of discretion standard. Barr v. Barr, 418 N.J. Super. 18, 46 (App. Div. 2011). However, "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017).

Pursuant to these principles, we affirm substantially for the reasons expressed by the motion judge. We add the following comments.

As our Supreme Court has noted, joint legal custody includes the "'authority and responsibility for making "major" decisions regarding the child's welfare,' [which] is often shared post-divorce by both parents." Pascale v. Pascale, 140 N.J. 583, 596 (1995) (quoting Beck v. Beck, 86 N.J. 480, 487

(1981)). However, our law also recognizes these rights are not immutable and parents may modify their rights and responsibilities vis-à-vis their children, so long as it is not against the children's best interests. See N.J.S.A. 9:2-4(d) ("The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.").

Here, the parties entered a series of consent orders, which transitioned the responsibility for college expenses exclusively to defendant. We discern no abuse of discretion in the motion judge's decision declining to disturb the arrangement. Moreover, the court already denied plaintiff's requests respecting the 2017-18 FAFSA when it entered the July 2020 order. The proper means of challenging the decision was an appeal, which plaintiff did not pursue, not successive enforcement motions. Notwithstanding the July 2020 order, plaintiff did not dispute defendant's representation he has provided her copies of the FAFSAs he has filed.

Even if plaintiff's claims were properly and timely asserted, we find no merit to her contention defendant acted with improper motive to either misuse her financial information or illegally obtain grants to fund the children's educations. The only evidence of an error on the FAFSA in the record was the 2017-2018 Institutional Student Information Record document, which shows the

institution was aware of the error and directed it be corrected. As the motion judge noted, it can only be presumed the error was fixed because the older child graduated. Plaintiff provided no objective evidence to the contrary, nor any evidence of an impropriety related to the younger child.

Finally, we note Pell grants do not have to be repaid because they are not loans. See U.S. Dep't of Educ., <https://studentaid.gov/understand-aid/types/grants/pell> (last visited Feb. 24, 2023). The instances where repayment is required did not apply here. See When You May Have to Repay a Grant, U.S. Dep't of Educ., <https://studentaid.gov/understand-aid/types/grants/#when-you-may-have-to-repay-a-grant> (last visited Feb. 24, 2023). And the criterion for a TAG award includes many more factors than just financial need. See N.J. Higher Educ. Student Assistance Auth., https://www.hesaa.org/documents/tag_program.pdf (last visited Feb. 24, 2023). For these reasons we decline to second-guess the motion judge's decision to deny plaintiff's motion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION