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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1527-21**

JANICE MARRA,

Plaintiff-Respondent,

v.

RALPH MARRA,

Defendant-Appellant.

Submitted February 6, 2023 — Decided June 8, 2023

Before Judges Whipple, Mawla, and Marczyk.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth County,
Docket No. FM-13-1538-14.

LaRocca Hornik Rosen Greenberg & Crupi, LLC,
attorneys for appellant (Elissa A. Perkins, of counsel
and on the briefs).

Florio Perrucci Steinhardt Cappelli Tipton & Taylor,
LLC, attorneys for respondent (Jennifer Ann Vorhies,
of counsel and on the brief).

PER CURIAM

Defendant Ralph Marra appeals from a December 14, 2021 order denying his motion for a reduction of his child support obligation and imposing a \$25,000 lump sum arrears payment, as well as a \$5,000 monthly arrears payment, in addition to his previous \$10,000 per month child support payment. We affirm in part, vacate in part, and remand for further proceedings.

I.

Plaintiff Janice Marra and defendant were married on July 31, 1994. Three children were born to the marriage. Plaintiff filed for divorce on April 4, 2014. During the marriage, plaintiff was a full-time homemaker and caregiver for the children, and defendant was a financial advisor. Defendant was a high earner, and the parties enjoyed a lavish marital lifestyle and owned homes in several states.

The issues before the trial court concerning defendant's child support obligation revolved largely around defendant's loss of work in the financial industry stemming from his legal issues and the corresponding impact on his earning capacity. Defendant was hired by Morgan Stanley in 2013 and earned significant income until he resigned on April 24, 2015, "due to [his] failure to

obtain trade authorizations from clients."¹ Following his resignation, a public document was filed with the Financial Industry Regulatory Authority (FINRA) detailing the circumstances surrounding defendant's resignation. Defendant alleges as a result of the FINRA filing, he was not marketable for large banking institutions, which negatively affected his earning power. In May 2015, defendant was employed by National Securities. Although his income decreased from what he was earning at Morgan Stanley, defendant still earned a substantial income through 2018.²

In July 2015, the parties agreed to binding arbitration. The arbitration was conducted over eight days in August and September 2020. Thereafter, the

¹ Defendant maintained he was vested with blanket trade authority by his clients.

² The arbitrator noted defendant's income for the six years prior to the arbitration hearing in August and September, 2020 was as follows: \$2,009,324 in 2014 (Morgan Stanley); \$2,033,581 in 2015 (Morgan Stanley; National Securities); \$505,140 in 2016 (National Securities); \$1,217,130 in 2017 (National Securities); \$472,707 in 2018 (National Securities); and \$121,977 in 2019 (National Securities). He further received \$3,986,200 in forgivable loans from Morgan Stanley in consideration for leaving his prior employer. He received additional forgivable loans thereafter. The outstanding sums on the loans became due immediately upon his exit from the company.

arbitrator issued a comprehensive 128-page decision.³ The arbitration order and decision were issued on March 2, 2021. As to defendant's child support obligations, plaintiff requested the arbitrator impute \$2,000,000 in income to defendant. Defendant indicated his income should be imputed at \$122,000,⁴ which he last earned in 2019. The arbitrator ultimately determined defendant could earn at least \$472,000 per year when he returns to work. Importantly, the arbitrator noted that was an amount defendant earned following the FINRA filing and after a reduction of his client base. The arbitrator imputed \$25,000 in income to plaintiff. Based on these imputed incomes, the arbitrator determined defendant would be responsible for a \$10,000 per month child support obligation.

Following the arbitration hearing, but before the decision was entered, defendant advised the arbitrator he had lost his job at National Securities. Specifically, defendant asserts National Securities declined to renew his contract as a result of an insider trading investigation which was opened involving him

³ The arbitration decision addressed various issues, including equitable distribution, alimony, cohabitation, child support, and counsel fees. We confine our discussion to the child support-related issues defendant raises in his appeal.

⁴ Defendant proposed a child support figure of \$390 per week pursuant to the Child Support Guidelines.

by the Federal Bureau of Investigation (FBI), Securities and Exchange Commission (SEC), and the United States Department of Justice (DOJ).⁵

On April 27, 2021, plaintiff filed a motion seeking to incorporate the arbitration award and decision into a Final Judgment of Divorce (FJD) and to enforce the arbitration order. On May 27, 2021, defendant filed a cross-motion seeking a downward modification of child support payments based largely on the SEC insider trading investigation and his unemployment. On June 11, 2021, the trial court heard argument and rendered an oral decision. The court indicated it would issue an order in the near future. However, because of delays occasioned by defendant's pending bankruptcy,⁶ the court did not issue an order until December 14, 2021, at which time it also issued a written decision.⁷

The court granted the parties' joint request to incorporate the arbitration award as part of the FJD. It further denied defendant's request for a modification of his child support payments and ordered defendant to pay a \$25,000 lump sum

⁵ Defendant's attorney certified in a subsequent submission to the trial court defendant was not a target of the investigation but was viewed as a person of interest whom the authorities "may want to serve as a witness."

⁶ In March 2019, defendant filed for Chapter 7 bankruptcy, claiming it was implausible he would ever secure adequate employment to satisfy his debts.

⁷ As addressed further below, the court's oral findings at times differed from the written decision.

arrears payment. The court further imposed a \$5,000 per month arrears payment in addition to his regular \$10,000 child support obligation.

II.

Defendant raises the following points on appeal:

POINT I

THE COURT ABUSED ITS DISCRETION BY DENYING . . . DEFENDANT'S APPLICATION FOR A REDUCTION OF HIS CHILD SUPPORT OBLIGATION, AS THE FACTS BEFORE THE COURT WARRANTED SUCH A MODIFICATION; ALTERNATIVELY, AND AT A MINIMUM, HE MADE A PRIMA FACIE SHOWING OF CHANGED CIRCUMSTANCES WARRANTING THE EXCHANGE OF FINANCIAL DISCOVERY AND A PLENARY HEARING.

POINT II

THE COURT FAILED TO PROVIDE FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING ITS ORDER REQUIRING THE DEFENDANT TO PAY \$5,000[] PER MONTH TOWARDS CHILD SUPPORT ARREARS AND A \$25,000[] LUMP SUM ARREARS PAYMENT; MOREOVER, THE COURT ABUSED ITS DISCRETION IN RENDERING SUCH AN ORDER.

More particularly, defendant argues the court erred by failing to consider the impact of the SEC insider trading investigation on his earning capacity and his lack of income in 2020 and 2021, which he contends is a change of

circumstances warranting a modification of his support obligation. He contends these events occurred after the arbitration fact-finding hearing. Moreover, defendant asserts the court failed to address his inability to pay the support and arrearages ordered. Defendant further argues the court's initial oral decision indicated it would deny the request for a lump sum payment and would enter a significantly lower monthly arrears payment, contrary to the written opinion.

Defendant urges us to remand with instructions for the trial court to set an appropriate obligation. Alternatively, he asserts we should direct the trial court to order an exchange of discovery and a plenary hearing.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). Appellate courts "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 411-12 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Accordingly, 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, 65 N.J. at 484).

"When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused [their] discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). "The trial court's 'award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice.'" Id. at 326 (quoting Jacoby, 427 N.J. Super. at 116).

The Family Part has authority under N.J.S.A. 2A:34-23 to modify child support awards. Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015). The statute provides child support orders "may be revised and altered by the court from time to time as circumstances may require." N.J.S.A. 2A:34-23. "Our courts have interpreted this statute to require a party who seeks modification to prove 'changed circumstances[.]'" Spangenberg, 442 N.J. Super. at 536 (alteration in original) (quoting Lepis v. Lepis, 83 N.J. 139, 157 (1980)). A motion for modification of child support "rests upon its own particular footing and [we] must give due recognition to the wide discretion[,] which our law

rightly affords to the trial judges who deal with these matters." Ibid. (second alteration in original) (quoting Martindell v. Martindell, 21 N.J. 341, 355 (1956)).

"In their determination of whether a party has the ability to pay support, trial judges are required to consider, as of the trial date, the 'potential earning capacity of an individual, not his or her actual income.'" Gormley v. Gormley, 462 N.J. Super. 433, 447 (App. Div. 2019) (quoting Caplan v. Caplan, 182 N.J. 250, 268 (2005)). "[A] 'court has every right to appraise realistically [a] defendant's potential earning power,' and examine 'potential earning capacity' rather than actual income, when imputing the ability to pay support." Elrom v. Elrom, 439 N.J. Super. 424, 435 (App. Div. 2015) (second alteration in original) (internal citations omitted) (first quoting Lynn v. Lynn, 165 N.J. Super. 328, 341 (App. Div. 1979), then Halliwell v. Halliwell, 326 N.J. Super. 442, 448 (App. Div. 1999)).

A.

The trial court noted defendant's application to significantly modify his child support obligation was filed less than three months after the arbitration order was entered. The court observed that modification of a support obligation is not warranted if the change in circumstances is only temporary. Bonanno v.

Bonanno, 4 N.J. 268, 275 (1950). The court proceeded to address the three issues defendant asserted were not addressed by the arbitrator—defendant's 2020-21 income, his separation from National Securities in September 2020, and the SEC insider trading investigation.

The court noted the arbitrator's decision "belies" defendant's arguments. The court stated the arbitrator was fully aware defendant was experiencing financial difficulties. Moreover, the arbitrator specifically referenced defendant's unemployment, noting he had lost his job at National Securities following the fact-finding hearing. In short, the arbitrator recognized defendant's unemployment and reduced income prior to rendering her decision.⁸ The court noted nothing had changed concerning these issues since the arbitrator's decision other than defendant "made no effort to improve his situation or secure a new job."

The court further rejected defendant's argument his child support should be reduced because the children were adequately supported by their trust accounts. The court held, "[t]he children's trust accounts were meant to be used

⁸ The court also noted the arbitrator found defendant "was less than forthright about his assets and expenses" Moreover, his imputed income was set at defendant's lowest income figure while at National Securities before he encountered physical and emotional problems and before the COVID-19 pandemic.

for college, not support. Indeed, [defendant] even requested that the funds be earmarked exclusively for college"

The trial court was also unpersuaded by defendant's argument regarding the impact of the SEC insider trading investigation. First, the court observed defendant lost his position at National Securities in the Fall of 2020 after the fact-finding hearing. Although the arbitrator did not reference the insider trading investigation, she was aware of defendant's separation from National Securities and specifically referenced his unemployment in rendering her decision and imputing defendant's income. The court further noted defendant certified he is "confident that [he] will be exonerated of any wrongdoing" regarding the insider trading investigation, and in turn, the court stated that "[g]iven [defendant's] confidence level, the investigation should not amount to a long-term impediment to re-employment."

Additionally, the court commented on the recent developments regarding the FINRA investigation. The court noted:

[O]n October 15, 2021, while this [m]otion was still pending, this [c]ourt was forwarded a letter from . . . [defendant]'s counsel for the FINRA matter. That letter stated that "FINRA has decided not to pursue a formal disciplinary action against [defendant]. Instead, FINRA will issue a Cautionary Action Letter ([CAL]) to him once the matter concludes." Notably, [defendant's counsel] advised that "[t]he CAL is not a

reportable event" [Defendant's counsel] describes the closing of the FINRA investigation against [defendant] as "welcome news."

[(ninth alteration in original).]

The court noted, based on the conclusion of the FINRA matter, "[defendant's] job prospects have now greatly improved." It rejected the opinion by the attorney—that defendant would still have difficulty securing a job based on the length of time he was out of work—because she was not an employability expert, and her opinion was unsupported by any evidence. Despite the conclusion of the FINRA matter, the court recognized the insider trading investigation remained open. Nevertheless, the court stated that although defense counsel represented there was no indication as to when the investigation might conclude, it would "not modify [the] child support order based upon some speculative future event, particularly when [defendant] is confident he will be fully exonerated"

The court concluded, "there has been no change in [defendant]'s employment status, a positive development with regard to the FINRA investigation, no change of the SEC/DOJ/FBI investigation[,], and no change in

the parties' respective assets."⁹ Accordingly, the court denied defendant's motion for a modification of his child support obligation.

We are satisfied the court did not abuse its discretion in denying defendant's request for a downward modification of child support. The court appropriately analyzed the facts and arguments of counsel in rendering its decision. Given our standard of review, we discern no basis to disturb the court's findings as there is no indication the decision was unreasonable, arbitrary, or clearly contrary to reason or to other evidence.

That being said, we recognize the SEC insider trading investigation could impact defendant's employability in the future depending on the outcome. Moreover, we recognize defendant's prediction about the outcome of the insider trading investigation should not be the dispositive factor utilized in denying a modification, but the trial court here did not entirely rely on defendant's statement. Rather, the court pointed to the arbitrator's discussion of defendant's unemployment, the temporary nature of the insider trading investigation, and the FINRA investigation developments. If defendant is not exonerated or if the

⁹ The court noted in its original oral decision the SEC investigation was something new and "perhaps made [defendant] more unemployable." However, the court concluded the situation was "only temporary" and under the caselaw was insufficient to establish a *prima facie* change of circumstances warranting a modification of child support.

investigation otherwise continues to impact his ability to work in the financial industry, he is not foreclosed from moving to modify his support obligation assuming he can demonstrate a Lepis change in circumstances.

B.

We now turn to defendant's challenge to the trial court's order imposing a \$25,000 lump sum arrearage payment and a \$5,000 per month arrears payment on top of defendant's existing \$10,000 per month child support obligation. Consistent with our standard of review concerning modification of child support, it is also well-established "the enforcement, collection [and] modification . . . of unpaid arrearages in . . . child support payments are matters addressed to the sound discretion of the court." In re Rogiers, 396 N.J. Super. 317, 327 (App. Div. 2007) (quoting Mastropole v. Mastropole, 181 N.J. Super. 130, 141 (App. Div. 1981)).

In rendering its oral decision, the trial court stated it was "going to require [defendant] to pay back the arrears . . . at a rate of an extra [\$1,000] per month" The court further noted it was "not inclined to do a lump sum payment . . . because [it] already denied the request to modify the support obligation, but [defendant] does have this investigation going on right now, and there are some financial consequences of that." Six months later, without any intervening

proceedings or discussion regarding the status of the insider trading investigation, the court ordered defendant to pay a lump sum of \$25,000 toward the arrears, along with a \$5,000 per month arrears payment "on top" of defendant's \$10,000 per month child support obligation. Other than observing defendant had not made any child support payments since the arbitration decision, the court did not provide any analysis or seek to reconcile its prior oral decision. Rather, the court significantly altered its oral findings to impose a substantially greater arrears obligation than originally contemplated.

Rule 1:7-4(a) states in addition to entering an appropriate written order, a trial court "shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury" "The rule requires specific findings of fact and conclusions of law" Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4 (2023). "Meaningful appellate review is inhibited unless the [court] sets forth the reasons for [its] opinion." Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)).

We conclude the court misapplied its discretion insofar as it did not adequately explain the reasons for its decision. Because the basis for the revised decision was not clearly articulated, we are constrained to vacate that aspect of

the court's order concerning the \$25,000 lump sum arrearages assessment along with the \$5,000 monthly arrears payment. On remand, the court will likely have a more robust record concerning the status of the insider trading investigation and its corresponding impact on defendant's financial and work-related issues in order to address his ability to pay the arrears and set the appropriate arrears payback amount.

To the extent we have not specifically addressed any remaining arguments raised by defendant, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, vacated in part, and remanded for further proceedings.
We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION