SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1967-21

LINDA LITTON,

Plaintiff-Respondent,

v.

YEHUDA BEN LITTON,

Defendant-Appellant.

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Argued May 15, 2023 – Decided June 14, 2023

Before Judges Whipple, Mawla, and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FM-15-1374-08.

Michael J. Gunteski argued the cause for appellant (Senoff & Enis, attorneys; Michael J. Gunteski, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant Yehuda Ben Litton appeals from a January 21, 2022 order denying his Rule 4:50-1 motion for relief from a judgment or order. Defendant argues his child support obligation was modified in an enforcement hearing and reiterates previously made assertions that the matrimonial arbitration award his former spouse received was procured by corruption, fraud, or other undue means. We have previously addressed many of these same arguments in Litton v. Litton (Litton I), No. A-0750-15 (App. Div. Feb. 17), cert. denied, 230 N.J. 569 (2017); and Litton v. Litton (Litton II), No. A-3105-18 (App. Div. Dec. 4, 2020). We affirm.

Plaintiff Linda Litton and defendant were married in August 1982 and divorced on January 10, 2008. They had one child. The parties agreed, as evidenced in the judgment of divorce, they would arbitrate before the Rabbinical Court to resolve their financial issues. A rabbinical panel heard the matter and entered an arbitration award on December 7, 2008. As part of the award, defendant was instructed to pay plaintiff "$5,000 per month until he gives her a [get]. The amount is to be reduced to $3,500 per month[] after the [get]s given . . . ." A [get] is a bill of divorce under Jewish law which, to be effective, must be given by the husband to the wife. Aflalo v. Aflalo, 295 N.J. Super. 527, 534 (Ch. Div. 1996).

The Family Part judge incorporated the rabbinical panel's decision. In 2009, plaintiff moved to enforce the $5,000 child support obligation. After filing a cross-motion—and requesting an ability-to-pay hearing—defendant filed a separate motion to modify this amount. On July 28, 2009, the motion judge, entered the following order:

> 1. Court finds that . . . defendant is not capable of complying with the support order at the present time[.]
>
> 2. Plaintiff's request to incarcerate defendant pursuant to Rule 1:10-2 is denied[.]
>
> 3. Defendant shall pay to plaintiff through Child Support (Probation Dep[artment]) Services, one-half of net pay from [any] check from [defendant's employer], by way of wage execution, if possibl[e.] If not, he shall pay Probation Dep[artment] directly. On a monthly [basis] he i[s] to forward copies of pay slips to plaintiff's attorney.
>
> 4. If . . . defendant receives any funds from any source (including loans and gifts), he shall pay to Probation Dep[artment] [half] of the net amount.

After a bench warrant for defendant's arrest for noncompliance with child support orders was issued, the Family Part entered another order on November 13, 2013. This order vacated the bench warrant and modified defendant's child support obligation to the sum of [twenty-three dollars] per week in accordance with the child support guideline worksheet.

Defendant's child support obligations ended on July 31, 2017. As of that date, defendant had an arrears balance of $188,537.86. In November 2018, defendant moved to vacate the arrears. This motion was unopposed. Defendant argued the November 2013 order constituted a finding the arbitration award was inequitable, though it did not address defendant's arrears balance. In particular, defendant noted one of the people on the rabbinical panel that decided the award was Rabbi Mendel Epstein. Rabbi Epstein was convicted in 2015 for kidnapping and torturing certain Jewish men to force them to consent to religious divorces. Due to these crimes, defendant argued the arbitration award should be deemed invalid. The court disagreed, noting we already found Rabbi Epstein's conduct and the arbitration award were unrelated in Litton I, slip op. at 5, and denied his request to vacate the arrears.[1]

In June 2021, defendant moved to vacate his arrears "based on the documented erroneous accounting of [the Probation Department]." [2] Specifically, he argued probation failed to take into account the 2009 order, which he asserted modified the $5,000 obligation. Plaintiff did not oppose this

[1] Defendant appealed this decision, which we affirmed in Litton II.

[2] This is the third time defendant filed this motion. The first was dismissed due to a pending appeal. The second was denied without prejudice due to improper service upon plaintiff.

motion. The trial court denied defendant's request, holding that the 2009 order, which found defendant could not pay the $5,000 per month arbitration award, was not a modification but a grant of forbearance as the result of an ability-to-pay (or ability-to-comply) hearing. It simply meant defendant would not be incarcerated due to his failure to pay child support. Defendant sought reconsideration, which was denied on August 31, 2021.

On December 2, 2021, defendant filed a Rule 4:50-1 motion seeking relief from the denial of reconsideration. He argued that "newly discovered documents" showed the 2009 proceeding was a modification hearing and 2009 order "constitute[d] mistake or inadvertence" because the child support order should have been modified. Defendant submitted, as newly discovered evidence, his February 27, 2009 cross-motion to plaintiff's motion to enforce, and his June 2009 motion to modify the child support obligation. This motion was unopposed. The court denied the motion on January 21, 2022.

The court reasoned that although defendant requested modification of the August 31, 2021 order, he was really "seeking to modify all prior court orders which denied his motion to modify child support that resulted after the July 28, 2009 [o]rder and that continued the $5,000 . . . per month support obligation." Therefore, to the extent the motion argued subsections (a) through (c) of Rule

4:50-1, the motion was time-barred under Rule 4:50-2, which requires such motions be brought within one year of the judgment, order, or proceeding.

As for the modification of the August 31, 2021 order—which would not be time-barred—the court concluded the motion still failed to warrant modification because there was no excusable neglect, mistake, or inadvertence shown to set aside or modify the order. The motions and procedural history defendant argued constituted newly discovered evidence were accessible to him when he filed the previous motions.

The court determined defendant had not met any of the requirements of Rule 4:50-1. This appeal followed.[3]

"The decision whether to vacate a judgment on one of the six specified grounds [found in Rule 4:50-1] is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B. v. A.L.G., 176 N.J. 201, 207 (2003) (citing Hous. Auth. of Town of Morristown v. Little, 135 N.J. 274, 283-84 (1994); Hodgson v. Applegate, 31 N.J. 29 (1959)). "That court's

[3] A probation hearing was held on March 7, 2022. The court issued an order on March 9, 2022, continuing to enforce the arrears balance of $182,626. Defendant filed a motion to supplement the record with this order, which we granted. However, he has not appealed from this order.

judgment will be left undisturbed 'unless it represents a clear abuse of discretion.'" Ibid. (quoting Little, 135 N.J. at 283).

Defendant argues: the motion court did not give weight to the July 2009 order; the court erred in failing to address "accounting errors"; probation failed to account for the July 2009 order; he was denied due process because he was never informed the July 2009 order was terminated; the court's failure to vacate his arrears enforced a religious penalty in violation of established case law; the trial court should have granted his unopposed motions; and he should have been granted a plenary hearing and discovery. Defendant makes these arguments assuming, as he has throughout this litigation, that the July 2009 order modified his support obligations under the Lepis[4] standard.

Based on our review, defendant, though explicitly moving for relief from the August 2021 order, was really moving for relief from all orders that enforced his $5,000 per month child support obligation and the arrears resulting from that obligation. Those orders were entered prior to December 2020 (one year before the motion for relief was filed). Thus, to the extent he argued reasons (a) and (b) of Rule 4:50-1, defendant's motions are time-barred for these orders.

[4] Lepis v. Lepis, 83 N.J. 139, 146 (1980).

Defendant argues he should be relieved from the August 2021 order because of "newly discovered evidence"—the motion and cross-motion he filed in 2009—that showed there had been a mistake. Relief on the grounds of mistake is governed by Rule 4:50-1(a) and contemplates the sort of mistake the parties "could not have protected themselves from during the litigation." Pressler & Verniero, Current N.J. Court Rules, cmt. 5.1.1. on R. 4:50-1 (2023). To constitute newly discovered evidence under Rule 4:50-1(b), the evidence must have been "unobtainable by the exercise of due diligence[,]" must have "probably . . . changed the result," and must have been "not merely cumulative." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 264 (2009) (quoting Quick Chek Food Stores v. Twp. of Springfield, 83 N.J. 438, 445 (1980)).

Moreover, an ability-to-pay hearing held pursuant to Rule 1:10-3

> is not a plenary hearing to decide the appropriate amount of support an obligor should pay. That amount has been determined, either by the court following a trial or post-judgment motion, or by the parties themselves. The hearing is also not a substitute for an appeal or a motion to modify the obligation based on changed circumstances. The hearing comes about because an obligor has failed to comply with an order. The objective of the hearing is simply to determine whether that failure was excusable or willful, i.e., the obligor was able to pay and did not. It does not establish the future obligation of the party paying support.

> [Schochet v. Schochet, 435 N.J. Super. 542, 548 (App. Div. 2014) (internal citation footnote omitted).]

The 2009 order addressed only defendant's ability to pay his arrears and whether he should be incarcerated for his failure to pay. The judge found defendant could not pay the $5,000 per month obligation, so he should not be incarcerated. Regardless of what defendant thought it was, it was an ability-to-pay hearing whose purpose was not to modify support.

Defendant also argues the court cannot force him to give plaintiff a get. However, defendant has already litigated the decision of the Rabbinical Court. In 2017, he moved to vacate the arbitration award, and again petitioned the court in 2019 to vacate his arrears based on the impropriety of the arbitration award. However, we affirmed the Rabbinical Court's decision twice—finding no coercion, corruption, or fraud—in Litton I, slip op. at 6, and Litton II, slip op. at 1-2.

Defendant next argues the court should have granted his unopposed motions and it was impermissibly biased in advancing arguments not raised by plaintiff. There is no rule or case law mandating unopposed motions to be automatically granted. A court's job is to follow the law. There is no indication whatsoever the court's decisions were contrary to law or that it inappropriately

advocated on behalf of plaintiff such that defendant was denied a "fair and unbiased hearing [or] judgment . . . ." R. 1:12-1(g).

We similarly reject defendant's argument he was entitled to a hearing. The decision to deny a plenary hearing is reviewed for an abuse of discretion. U.S. Bank Nat. Ass'n v. Curcio, 444 N.J. Super. 94, 111 (App. Div. 2016) (citing Colca v. Anson, 413 N.J. Super. 405, 421-22 (App. Div. 2010)). Denial of a plenary hearing does not deprive the party of an opportunity to present his or her case when it "would adduce no further facts or information." Fineberg v. Fineberg, 309 N.J. Super. 205, 218 (App. Div. 1998).

Here, the motion judge found there was no issue of fact and no indication the July 28, 2009 hearing was anything other than an ability-to-pay hearing. The only evidence defendant contends he would offer at a plenary hearing is his own financial documentation, but he offers this in relation to the March 7, 2022 enforcement hearing, which he did not appeal.

Thus, "[a]ll of the relevant material was supplied to the motion judge both at the time of the . . . application . . . . The plenary hearing would adduce no further facts or information." Id. at 218. The trial judge did not abuse her discretion in denying a plenary hearing.

We do not address defendant's remaining arguments as 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