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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2282-21**

WILLIAM ENGELHARDT, JR.,

Plaintiff-Appellant,

v.

DIANA ENGELHARDT,

Defendant-Respondent.

Submitted March 8, 2023 – Decided March 17, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Ocean County, Docket
No. FM-15-0658-04.

William Engelhardt, Jr., appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff William Engelhardt, Jr. appeals from a March 21, 2022 Family Part order modifying plaintiff's

alimony obligation to his former spouse, defendant Diana Engelhardt. Finding no merit to plaintiff's arguments on appeal, we affirm.

The genesis of this proceeding was defendant's 2018 motion to terminate or reduce his permanent \$550 per week alimony obligation that was established in the parties' 2005 dual judgment of divorce. Following a plenary hearing, the court entered an August 30, 2018 order reducing the alimony obligation to \$250 per week. The court later denied plaintiff's motion for reconsideration of the August 30, 2018 order.

In our decision on plaintiff's appeal from the court's orders, we rejected his arguments the court: failed to properly consider and weigh the applicable statutory factors in modifying his alimony obligations; erred by considering income defendant earned from the retirement account he received as part of the equitable distribution of property in its calculation of the modified alimony obligation; failed to consider what he argued was his right to maintain the marital lifestyle; and erroneously set a modified alimony obligation resulting in an income for defendant greater than plaintiff's. Engelhardt v. Engelhardt (Engelhardt I), No. A-1183-18 (App. Div. Feb. 24, 2020) (slip op. at 2).

We also explained that in its decision following the plenary hearing, the trial court found plaintiff contributed a minimum of \$26,000 into his retirement

account following entry of the judgment of divorce, and the trial court reasoned the income earned on the post-judgment contributions could be properly considered in calculating plaintiff's income and assets to determine his modified alimony obligation. Id. at 11-12. We further explained that because the trial court did not identify the precise amount of post-judgment contributions made by plaintiff to his retirement account that it used to calculate plaintiff's income, assets, and modified alimony obligation, a remand was required for the court to make express findings on those issues. Id. at 12-13.

Following the remand, the court issued a supplementary decision, which included detailed findings explaining its calculation of plaintiff's modified alimony obligation. In part, the court determined there was \$62,280 from plaintiff's post-judgment retirement funds eligible for inclusion in plaintiff's available income and the calculation of plaintiff's modified alimony obligation. The court further determined and analyzed the parties' respective incomes from all sources, concluding there was a \$1,085 difference between plaintiff's and defendant's monthly gross incomes.

The court noted the income differential was "in plaintiff's favor," meaning plaintiff's gross monthly income exceeded defendant's gross income by \$1,085. The court also determined the difference in the parties' incomes "should be

apportioned 60% in favor of . . . [p]laintiff and 40% in favor of . . . [d]efendant[,]" and, based on mathematical calculations it explained, the court set plaintiff's modified alimony obligation at \$250 per week. Plaintiff filed a reconsideration motion, which the court denied.

In our opinion on plaintiff's appeal from the court's orders, we determined the court made proper findings concerning plaintiff's income from the post-judgment contributions to his retirement account. We found, however, the court made mathematical and typographical errors in its written decision and order on remand. Engelhardt v. Engelhardt (Engelhardt II), No. A-1441-20 (App. Div. Sept. 17, 2021) (slip op. at 11-15). We concluded the court intended to "establish a modified alimony amount of [60%] of the \$1[,]085 differential between plaintiff's gross income, including \$519 in retirement income, and defendant's gross income," or \$963 per month and \$223.23 weekly.¹ Id. at 13, 13 n.9.

We also determined there was an additional issue requiring a second remand to the trial court. Id. at 13. We noted the court's order stated 60% of

¹ We also noted plaintiff did not appeal from that portion of the trial court's order directing plaintiff pay an additional \$25 per week in alimony based on his assets, and therefore the court did not consider or modify that part of its initial modified alimony award on remand. Id. at 15 n.11.

the income differential between the parties should be allocated in plaintiff's favor, but the court directed that 60% of the differential — \$963 per month — be paid to defendant as modified alimony. Id. at 13-14. We observed that actual allocation, as reflected in the modified alimony order, did not favor plaintiff. We therefore remanded for the court to resolve "the conflict created by its statement the sixty-forty split would be applied in plaintiff's favor and its application of the split in defendant's favor." Id. at 15.

Following oral argument, the remand court issued a thorough decision detailing the reasons for its finding plaintiff's alimony obligation should be modified, and explaining its consideration of the parties' incomes and other factors relevant to a modification of alimony under N.J.S.A. 2A:34-23(j). The court also explained its opinion on the initial remand incorrectly stated the sixty-forty split of the income differential should be applied in plaintiff's favor because the court intended the split be allocated in defendant's favor. The court concluded plaintiff's modified alimony obligation was \$247 per week.² This appeal followed.

² The court calculated the \$247 weekly alimony amount by awarding plaintiff sixty percent of the \$1,085 monthly income differential, or \$963 per month rounded to \$222 per week, plus the \$25 per week based on plaintiff's assets. As noted, plaintiff has never challenged the \$25 per week portion of the court's modified alimony award.

We ordinarily accord "great deference to discretionary decisions of Family Part judges[,] in recognition of the "'family courts' special jurisdiction and expertise in family matters" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (citation omitted); N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Hitesman v. Bridgeway, Inc., 218 N.J. 8, 26 (2014) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Plaintiff first argues the trial court failed to correctly address the issue we directed it to address on remand. See Engelhardt II, slip op. at 13. More particularly, plaintiff claims the court erred because in its decision on the initial remand, it determined the sixty-forty split of the income differential should be applied in his favor and there was no basis for the court to "change its mind" and determine the split should be allocated in defendant's favor.

We reject the argument because it founded on the incorrect premise the court changed its mind following the remand ordered in Engelhardt II. The argument further ignores that in its initial decision addressing the split and

setting the modified alimony amount, the court actually applied the split in defendant's favor in its calculation of plaintiff's alimony obligation. Indeed, it was the conflict between the court's statement the split should be allocated in plaintiff's favor and the court's actual application of the split in defendant's favor that provided the basis for the remand for the court to clarify what was intended.

On remand, the court addressed the issue pursuant to our instructions in Engelhardt II, explaining it simply misstated that the split should be applied in plaintiff's favor and noting that, in accordance with its intention and findings, it had actually applied the split in defendant's favor. Thus, contrary to plaintiff's contention, the remand court neither changed its mind nor erred by noting its misstatement and clarifying its findings in a manner consistent with the modified alimony it awarded in the first instance. We therefore find no error in the court's determination of the issue we directed it address on remand.

We are also unpersuaded by plaintiff's claim the court erred by failing to consider his standard of living during the parties' marriage in the calculation of his modified alimony obligation. We rejected the identical argument in plaintiff's initial appeal, Engelhardt I, slip op. at 2, and there has been no change in circumstances warranting a revisitation of the issue following two limited remands that did not change the modified alimony amount that was the subject

of the initial appeal. Moreover, plaintiff fails to demonstrate the court's detailed findings supporting the modified alimony amount under the factors set forth in N.J.S.A. 2A:34-23(a) are not supported by substantial credible evidence, cf. Gnall v. Gnall, 222 N.J. 414, 428 (2015) (explaining a trial courts factual findings are binding on appeal if supported by "adequate, substantial, credible evidence"), and we otherwise find no basis to conclude the court abused its discretion in ordering the modification of plaintiff's alimony obligation, see Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006) (explaining a determination whether to modify alimony rests in the family court's "sound discretion").

Affirmed.

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


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